

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-1085

To be argued by  
SHEILA GINSBERG

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,  
  
Plaintiff-Appellee,  
  
-against-

JOSE ARAUJO, JOHN DOE,  
a/k/a "NENO," and  
JORGITA RIVERA,  
  
Defendants-Appellants.

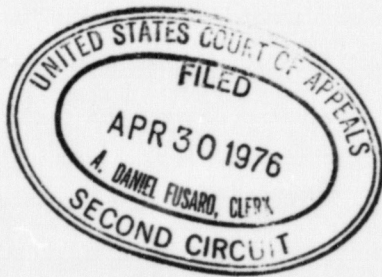
*B*  
*PGS*  
Docket No. 76-1085

---

APPENDIX TO THE BRIEF  
FOR APPELLANT RIVERA

---

ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
JORGITA RIVERA  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

SHEILA GINSBERG,  
Of Counsel.

PAGINATION AS IN ORIGINAL COPY



CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

75 CRIM. 936

D. C. Form No. 100 Rev.

UNITED STATES OF AMERICA

ATTORNEYS

-v-

For U. S.:

Michael S. Devorkin AUSA  
791-1920-1926

ANGEL MOLINA, a/k/a "Ariques," 1-4, 5 :  
MANUEL ADAMES, a/k/a "Pelao," 1-4, 6, 16-18 :  
CAESAR MORALES, 1-4, 7 :  
FEDERICO RUIZ, a/k/a "Papito," 1-4, 8 :  
JUAN MEJIA, a/k/a "Guancho," 1-4 :  
JORGITA RIVERA, 1-4, 9 :  
JOHN DOE, a/k/a "Cristobal," 1-4, 10 :  
JOHN DOE, a/k/a "Freddie," 1-4, 11 t/n Freddie :  
JOHN DOE, a/k/a "Neno," 1-4, 12 t/n : Almieda  
JOSE ARAUJO, 1-4 Rafael Hichez  
RAMON ORTEGA, a/k/a "Ramoncita," 1-4, 13 :  
RAFAEL CALZADO, a/k/a "Rafael :  
Espinal," 1-4, 14 :  
JOHN DOE, a/k/a "Chuleria," 1, 15, 16, 17, 18, 19 :  
FELIX IRRIZARRI, and 1, 17, 19 :  
RAFAEL JACOBO 1, 16, 17 :

For Defendant:

(06) STA

DATE NAME OR RECEIPT NO. REC. DISB.

J.S. 2 mailed

Clerk

J.S. 3 mailed

Marshal

Violation

Docket fee

Title

Sec.

18:371 Consp. to counterfeit. (Ct.1)  
18:474 Making impressions and plates. (Ct.2)  
18:471: Making counterfeit money. (Ct.3)  
18:473 Dealing in counterfeit. (Cts.4-18)  
18:472 Possess. counterfeit. (Cts.19)

Nineteen Counts

DATE

PROCEEDINGS

9-25-75 Filed indictment and ordered sealed. B/W ordered. Duffy, J. 7-24-75  
9-25-75 B/W's ordered on Defts. Angel Molino, Caesar Moorales, Federico Ruiz, Jorgita Rivera, John Doe a/k/a Cristobal, John Doe a/k/a Freddie, John Doe a/k/a Neno, Jose Araujo, Ramon Ortega, Rafael Calzado, John Doe a/k/a Chuleria. Duffy, J.  
9-30-75 Indictment ordered unsealed for Magistrates inspection and setting of bail as directed by Cooper, J. and is ordered resealed. Duffy, J.  
10-6-75 Indictment ordered unsealed. Cannella, J.  
Manuel Adames present (no Atty.) Court directs a plea of not guilty be entered. Bail as fixed in superceding case 75-cr-740 Cont'd.  
Juan Mejia deft. present Edward Panzer assigned as counsel, pleads not guilty thru interpreter Anita Zevallos (sworn). Bail \$20,000 P.R.E. secured by \$2,000 cash. Deft. released on his own recognizance to 10-9-75 at 4:PM at which time he is to post bail as indicated. Deft. ordered fingerprinted and photographed., To surrender passport to AUSA Devorkin.  
Jorgita Rivera Deft. present (no Atty.) Interpreter present. Court directs a plea of not guilty be entered. Bail \$35,000 cont'd. Deft. continued remanded in lieu of bail.

DATE	PROCEEDINGS
	Jose Araujo Deft. present (Atty. present) pleads not guilty. Continued remanded in lieu of bail fixed at \$10,000 P.R.B. secured by \$1,000 cash. Felix Irrizacri Deft. not present (Atty. present) Court directs a plea of not guilty be entered. Bail continued. Deft. Rafael Jacobo not present (Atty. present) Court directs a plea of not guilty be entered. Case assigned to Cooper, J. as related to and superceding indictment 75-cr- Cannella, J.
10-6-75	Deft. John Doe a/k/a "Freddie", tn Freddie Almieda (atty. Frederick Cohn). Pleads not guilty. Deft. continued remanded in lieu of \$10,000 bail fixed by Magistrate. ....Cannella, J.
10-16-75	JOSE ARAUJO-Filed Remand. - 10-7-75 Deft. released from the custody of the U.S. Marshal upon posting a \$10,000 bond secured by \$1,000 cash, subject of I.N.S. detainer.
10-07-75	JOSE ARAUJO-Filed deft's. appearance bond in the sum of \$10,000.00 secured by \$1,000.00 cash, Receipt #58821 - acknowledged by the Clerk.
10-22-75	JOSE ARAUJO, JORGITA RIVLRA & FREDDIE ALMIEDA - Filed the following papers received from Magistrate Schreiber (Mag. # 75-1350). Docket Entry Sheet (3) CJA Form 23 - Deft's. financial affidavit (3) Disposition Sheet Appointment of Counsel - Almieda - Robert Mitchell, 51 Chambers St., N.Y.C. 10007 WO2-06 Araujo - Frederick H. Cohn, 299 B'way., N.Y.C. 10012 349-7755 Warrant for Arrest (3)
10-29-75	JOSE ARAUJO-Filed Magistrate's Final Commitment (Mag. # 75-1350) ...Schreiber, J.
11-07-75	RAFAEL HICHEZ-Filed deft's. appearance bond in the sum of \$10,000 unsecured P.R.B. co-signed by Rosa Hichez (wife) - acknowledged by the Clerk. (in Spanish)
11-10-75	RAFAEL HICHEZ-Filed warrant for arrest of deft. with return. Executed on 11-6-75.
12-2-75	Filed CJA Form 21 Copy 5 appointing Anita Zevallos as interpreter, dated 11-10-75. ....Cannella, J.
12-2-75	Filed CJA Form 21 Copy 2 approving payment to Anita Zevallos, dated 11-10-75. ....Cannella, J.
12-15-75	FREDDIE ALMIEDA-Filed CJA Form 21 Copy 5 appointing Barbara Landreth as interpreter, dated 11-17-75. ....Cooper, J.
12-15-75	FREDDIE ALMIEDA-Filed CJA Form 21 Copy 2 approving payment to Barbara Landreth, dated 11-17-75. ....Cooper, J.
12-15-75	FREDDIE ALMIEDA-Filed Sealed Envelope containing affidavit & Order signed by Cooper, J. dated 12-11-75. Ordered sealed and placed in vault in Room 602.

Cont'd. on Page #3



JUDGE COOPER

D. C. 110 Rev. Civil Docket Continuation

Page #3

DATE	PROCEEDINGS	De Jud
12-29-75	JOHN DOE, a/k/a "Chuleria", t/n ANTONIO CORREA-Filed the following papers received from Magistrate Raby (Mag. #75-1634) Docket Entry Sheet Indictment Warrant S.D.N.Y. Disposition Sheet Copy of indictment, S.D.N.Y. CJA Form 23 - Financial affidavit Appointment of Counsel - C. Joseph E. Hallinan, 20 East 46th St., N.Y.C. 10017 681-4320	
01-07-76	Filed transcript of record of proceedings dated 11-3-75.	
*11-03-75	Deft. Manuel Adames (atty. present Seymour Landau) withdraws his plea of not guilty and pleads guilty to counts 3,4 & 17. Pre-sentence investigation ordered. Probation notified. Sentence dated open. Deft. remanded.....Cooper,J.	
* 11-06-75	Deft. Jacobs (atty. present A Isadore Eibel) withdraws his plea of not guilty & pleads guilty to count 17 only. Pre-sentence report ordered. Probation notified. Sentence date open. Present bail condition continued....Cooper,J.	
* 11-06-75	Deft. John Doe a/k/a "Neno", tn Rafael Ubaldo Hicchez-Garcia produced on bench warrant. Court directs a not guilty plea be entered. (Deft's. attorney not present). Bail \$10,000.00 P.R.B. unsecured bond to be signed by the Deft's. wife to be posted by 11-7-75 at 10 am.....Cooper,J.	
* 12-11-75	Deft. John Doe a/k/a Freddie Almieda (atty present Frederick Cohen & interpreter Edward Landreth) withdraws his plea of not guilty & pleads guilty to counts 1 & 11. Pre-sentence report ordered. Probation notified. Sentence open date. Deft. remanded in custody of U.S. Marshal.....Cooper,J.	
01-05-76	Trial begun as to Defts. Rivera, Rafael Hicchez, Araujo, Correa & Irrizarri.	
01-06-76	Trial continued.	
01-07-76	Trial continued.	
01-08-76	Trial continued.	
01-09-76	Trial continued.	
01-12-76	Trial continued.	
01-13-76	Trial continued.	
01-14-76	Trial continued.	
01-15-76	Trial continued. Deft. Felix Irrizarri withdraws his plea of not guilty & pleads guilty to counts 1 & 17. (During Trial). Pre-sentence report ordered. Probation notified. Sentence date to be fixed after the instant trial. Present bail condition continued.....Cooper,J.	
01-16-76	Trial continued.	
01-19-76	Trial continued. Govt. moves to dismiss indictment against the deft. Antonio Correa - Acquittal Granted.	
01-20-76	Trial continued.	
01-21-76	Trial continued & concluded. Jury Verdict at 10:45 P.M. Special Verdict. Deft. Jorgita Rivera guilty on counts 1,2,3,4 & 9. Deft. Jose Araujo a/k/a John Doe & Neno guilty on counts 1,2,3 & 4. Deft. Rafael Hicchez guilty on counts 1,2,3,4 & 12. Jury polled as to all defts. Motions made & denied as to all defts. Pre-sentence report ordered as to all defts. & probation notified. Sentences 2-18-76 at 12:45 P.M. - All defts. remanded.....Cooper,J.	
	-over-	

Page 24

DATE	PROCEEDINGS	Date Order Judgment
02-04-76	ANTONIO CORREA-Filed Magistrate's Final commitment.	
02-09-76	JOSE ARAUJO-Filed CJA form 21 Copy 5 appointing Albert Barron-Boyne as interpreter, dated 1-5-76.....Cooper,J.	
02-09-76	JOSE ARAUJO-Filed CJA Form 21 Copy 2 approving payment to Albert Barron-Boyne dated 1-22-76.....Cooper,J. Payment in excess of statutory limitation approved 2-29-76.....Kaufman,Ch.C.J.	
02-10-76	JOSE ARAUJO-Filed CJA Form 20 Copy 5 appointing Robert Mitchell as attorney for deft., dated 10-1-76.....Mag. Schreiber.	
02-10-76	JOSE ARAUJO-Filed CJA Form 20 Copy 2 approving payment to Robert Mitchell, dated 1-13-76.....Cooper,J.	
02-18-76	JOSE ARAUJO-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR on each of counts 1,2,3 and 4 to run concurrently. Deft. to be given credit for time already served. Deft. advised of his right to appeal. Deft. remanded.....Cooper,J. Issued commitment 2-19-76.	
02-18-7	JORGITA RIVERA-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TEN (10) YEARS. FIVE (5) YEARS on count 1. TEN (10) YEARS on count 2. TEN (10) YEARS on count 3. TEN (10) YEARS on count 4. TEN (10) YEARS on count 9. All sentences to run concurrently. Total sentence TEN (10) YEARS. Deft. to be given credit for time already served. Deft. advised of his right to appeal. Deft. remanded.....Cooper,J. Issued commitment 2-19-76.	
02-18-76	RAFAEL HICHEZ-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on each of counts 1,2,3,4 and 12 to run concurrently. Total sentence THREE (3) YEARS. Deft. to be given credit for time already served. Deft. advised of his right to appeal. Deft. remanded....Cooper	
02-23-76	JOSE ARAUJO-Filed deft's. notice of appeal from the judgment entered on 2-18-76. Mailed copies to Jose Araujo, M.C.C., 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office.	
02-23-76	RAFAEL HICHEZ-Filed deft's. notice of appeal from the judgment entered on 2-18-76. Mailed copies to Rafael Hichez, M.C.C., 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office.	
03-05-76	RAFAEL HICHEZ - Filed true copy of J & C with Marshals return - Dft. delivered on 2-18-76 to Warden, MCC, NYC.	
03-05-76	JOSE ARAUJO - Filed true copy of J & C with Marshals return - Dft. delivered on 2-18-76 to Warden, MCC, NYC.	
03-05-76	JORGITA RIVERA - Filed true copy of J & C with Marshals return - Dft. delivered On 2-18-76 to Warden, MCC, NYC.	

(Over)



DATE	PROCEEDINGS
03-08-76	Filed Form CJA 21 copy 2 approving payment for Manuel RAS - 163-07 21st Avenue, Whitestone, NY 11357..... Cooper J dtd. 3/1/76
03-08-76	Filed Form CJA 21 copy 5 appointing Manuel RAS as interpreter for dft.
03-08-76	(IRRIZARRI, FELIX) Filed JUDGMENT & COMMITMENT ORDER ( Atty. Present) The dft. is hereby committed to the Custody of the Atty. General or his authorized representative for imprisonment for a period of TWO(2)YEARS on each of Counts 1 and 17 pur. to Sec. 3651 of T:18 in a jail type institution for a period of six (6) MONTHS, as provided in the aforementioned section. Execution of the remainder of the prison sentence is suspended & the dft. is placed on probation for period of eighteen (18)MONTHS, TO commence upon the expiration of confinement, subject to the standing probation order of this court. Count 19 is dismissed on the motion of defts. counsel with the consent of the Gov't.....Cooper J.
03-08-76	Issued Commitment.
03-03-76	FREDDIE ALMIEDA - Filed JUDGMENT & COMMITMENT ORDER ( Atty. Present) The dft. is hereby committed to the Custody of the Atty. General or his authorized representative for imprisonment for a period of TWO(2)YEARS on each counts 1 & 11, pur. to Sec. 3651 of T.18 USC as amended with the provision that the dft. be confined in a jail type institution for a period of SIX(6)MONTHS, as provided in the aforesaid Sec. Execution of the remainder of the prison sentence is suspended & the dft. is placed on probation for a period of EIGHTEEN(18)MONTHS to commence upon expiration of confinement, subject to the standing probation order of this court. Cts 2,3,&4 are dismissed on motion of the dfts. counsel. Dft. is remanded.....Cooper J.
3-9-76	Issued Commitment.
3-3-76	RAFAEL JACOBO - Filed JUDGMENT & COMMITMENT ORDER (Atty Present) The Dft. is hereby committed to the Custody of the Atty. General or his authorized representative for imprisonment for a period of TWO (2) YEARS execution of prison sentence is suspended & the dft. is placed on probation for a period of TWO(2)YEARS, subject to the standing probation order of this court. The Dft. to be given credit for time already served. Count 1 & 16 are dismissed on motion of defts. counsel with the consent of the Gov't. ....Cooper J.
3-10-76	Issued Commitment.
3-3-76	MANUEL ADAMES - Filed JUDGMENT & COMMITMENT ORDER (Atty. Present) The Dft. is hereby committed to the Custody of the Atty. General or his authorized representative for imprisonment for a period of TWO(2)YEARS on Counts 3,4 & 17 to run concurrently with each other. Dft. to be given credit for time already served. Cts. 1,2,6,16 & 18 are dismissed on motion of the dfts. counsel with the consent of the Gov't....Dft. remanded.....Cooper J.
3-11-76	Issued Commitment.
03-08-76	Filed Transcript of proceedings dtd. 1-15,16,19,20/1976.
03-08-76	Filed Transcript of proceedings dtd. 1-5,6,7,8,9,12,13,14/1976.
03-08-76	JOSE ARAUJO, et al. - Filed Notice of Certification Record to the USCA.
03-15-76	MANUEL ADAMES - Filed Form CJA 21 Copy 2 - approving payment to Manue RAS 163-07 21st Avenue, Whitestone NY 11357

(OVER)



DATE	PROCEEDINGS
03-15-76	MANUEL ADAMES - Filed Form CJA 21 Copy 5 - appointing Manuel RAS -163-07 21st Avenue Whiteston, NY 11357 as atty. for deft.
03-15-76	FREDDIE ALMIEDA - Filed CJA 20 copy 2 - approving payment to Frederick Cohn - 299 Bway, NYC 10007 - Tel. 349-7755
03-15-76	FREDDIE ALMIEDA - Filed CJA Form 20 copy 5 - appointing Frederick Cohn - 299 Bway, NYC 10007- Tel 349-7755 as atty for deft.
03-15-76	JORGITA RIVERA - Filed Magistrates Final Commitment.
3-11-76	JORGITA RIVERA - Filed Notice of Appeal from Judgment dtd. 2-18-76.(mailed notice)
3-16-76	FELIX IRRIZARRI - Filed Transcript of proceeding dtd. 1-15-76.
3-17-76	JORGITA RIVERA - Filed Notice of Certification of Record to the USCA.(Supplemental)
3-19-76	<del>Transcript of record of proceedings, dated</del> JAN 21-76 (CHARGE OF THE COURT) Gov'ts.
03-22-76	FREDDIE ALMEIDA - Filed/Affdvt. in opposition to Defts. Motion for a recommendation against deportation.
03-22-76	RAFAEL JACOBO - Filed Gov'ts. Affdvt. in opposition to Defts. motion for a recommendation against deportation.
03-22-76	JOSE ARUJO, et al. - Filed Notice of Certification of Supplemental Record to the USCA.
03-24-76	FREDDIE ALMEIDA - Filed Defts. Motion to recommend against Deportation.
03-24-76	FREDDIE ALMEIDA - Filed Memo. End. on Defts. motion dtd. 3-24-76. The Within Application is denied in all respects.....Cooper J.(mailed notice)
03-24-76	RAFAEL JACOBO - Filed Defts. affdvt. & notice of motion for not to deport deft.
03-24-76	RAFAEL JACOBO - Filed Memo. End. on defts. motion dtd. 3-24-76. Motion denied in all respects. Cooper J. (mailed notice)
03-25-76	FREDDIE ALMIEDA - Filed Mag. Final Commitment.
03-26-76	Filed Transcript of Proceeding dtd. 11-06-75.
03-26-76	Filed Transcript of proceeding dtd. 12-11-75.
04-05-76	FELIX IRRIZARRI - Filed True Copy of J & C with marshal ret. Dft. delivered to Warden, MCC, NYC on 3-08-76.
04-05-76	MANUEL ADAMES - Filed True Copy of J & C with marshals ret. Dft. delivered to Warden, MCC, NYC on 3-3-76.
04-05-76	FREDDIE ALMIEDA - Filed True Copy of J & C with marshals ret. Dft. delivered to Warden, MCC, NYC on 3-3-76.
04-15-76	JOHN DOE, a/k/a Cristobal - Filed Affdvt. for Writ of Habeas Corpus Ad Testificandum Writ Issued Ret. 4/16/76.
04-20-76	Filed transcript of record of proceedings, dated: FEB 18-76

(Continued)

DATE	PROCEEDINGS	
04-28-75	RABBIT JACOBO - Filed CMA 20 Copy 2 - Approving consent to Isadore Kib-1, 170 Copy, WFO 10013 011. 4/21/75 Carter J.	
04-20-75	JOSE ARAUJO, et al. - Filed Notice of Certification of Supplemental Record to the USA.	



MD:mr  
75-1393  
d-718

75 CRIM. 936

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

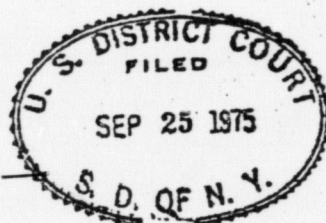
UNITED STATES OF AMERICA

-v-

INDICTMENT

ANGEL MOLINA, a/k/a "Ariques,"  
MANUEL ADAMES, a/k/a "Pelao,"  
CAESAR MORALES,  
FEDERICO RUIZ, a/k/a "Papito,"  
JUAN MEJIA, a/k/a "Guancho,"  
JORGITA RIVERA,  
JOHN DOE, a/k/a "Cristobal,"  
JOHN DOE, a/k/a "Freddie,"  
JOHN DOE, a/k/a "Neno,"  
JOSE ARAUJO,  
RAMON ORTEGA, a/k/a "Ramoncita,"  
RAFAEL CALZADO, a/k/a "Rafael  
Espinal,"  
JOHN DOE, a/k/a "Chuleria,"  
FELIX IRRIZARRI, and  
RAFAEL JACOBO

S 75 Cr.



Defendants.

The Grand Jury charges:

1. From on or about the 1st day of January, 1975, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ANGEL MOLINA, a/k/a "Ariques," MANUEL ADAMES, a/k/a "Pelao," CAESAR MORALES, FEDERICO RUIZ, a/k/a "Papito," JUAN MEJIA, a/k/a "Guancho," JORGITA RIVERA, JOHN DOE, a/k/a "Cristobal," JOHN DOE, a/k/a "Freddie," JOHN DOE, a/k/a "Neno," JOSE ARAUJO, RAMON ORTEGA, a/k/a "Ramoncita," RAFAEL CALZADO, a/k/a "Rafael Espinal," JOHN DOE, a/k/a "Chuleria," FELIX IRRIZARRI, and RAFAEL JACOBO, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with others known and unknown to the Grand Jury to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 471, 473 and 474.

MICROFILM

OCT 07 1975

2. It was a part of said conspiracy that the defendants, ANGEL MOLINA, a/k/a "Ariques," MANUEL ADAMES, a/k/a "Pelao," CAESAR MORALES, FEDERICO RUIZ, a/k/a "Papito," JUAN MEJIA, a/k/a "Guancho," JORGITA RIVERA, JOHN DOE, a/k/a "Cristobal," JOHN DOE, a/k/a "Freddie," JOHN DOE, a/k/a "Neno," JOSE ARAUJO, RAMON ORTEGA, a/k/a "Ramoncita," and RAFAEL CALZADO, a/k/a "Rafael Espinal," JOHN DOE, a/k/a "Chuleria," FELIX IRRIZARRI and RAFAEL JACOBO and other co-conspirators would make a photograph and impression in the likeness of an obligation of the United States without direction by a proper officer of the United States, and would make plates, stones and other things in the likeness of plates designated for the printing of obligations of the United States, to wit, a quantity of printing plates and negatives bearing images of genuine obligations of the United States, including \$10, \$20, and \$50 Federal Reserve Notes.

3. It was further a part of said conspiracy that the defendants ANGEL MOLINA, a/k/a "Ariques," MANUEL ADAMES, a/k/a "Pelao," CAESAR MORALES, FEDERICO RUIZ, a/k/a "Papito," JUAN MEJIA, a/k/a "Guancho," JORGITA RIVERA, JOHN DOE, a/k/a "Cristobal," JOHN DOE, a/k/a "Freddie," JOHN DOE, a/k/a "Neno," JOSE ARAUJO, RAMON ORTEGA, a/k/a "Ramoncita," and RAFAEL CALZADO, a/k/a "Rafael Espinal," JOHN DOE, a/k/a "Chuleria," FELIX IRRIZARRI and RAFAEL JACOBO and other co-conspirators would, with intent to defraud, falsely make, forge and counterfeit obligations of the United States, to wit, counterfeit \$10, \$20, and \$50 Federal Reserve Notes.

4. It was further a part of said conspiracy that the defendants ANGEL MOLINA, a/k/a "Ariques," MANUEL ADAMES, a/k/a "Pelao," CAESAR MORALES, FEDERICO RUIZ, a/k/a "Papito," JUAN MEJIA, a/k/a "Guancho," JORGITA RIVERA, JOHN DOE, a/k/a "Cristobal," JOHN DOE, a/k/a "Freddie," JOHN DOE, a/k/a "Neno," JOSE ARAUJO, RAMON ORTEGA, a/k/a "Ramoncita," RAFAEL CALZADO, a/k/a "Rafael Espinal," JOHN DOE, a/k/a "Chuleria,"



MD:OW  
d-718

FELIX IRRIZARRI, and RAFAEL JACOBO, and other co-conspirators would sell, exchange, transfer, receive and deliver false, forged and counterfeited obligations of the United States, to wit, the counterfeit \$10, \$20 and \$50, Federal Reserve Notes described in paragraph 3 of this Count with the intent that the same be passed, published and used as true and genuine.

OVERT ACTS

In furtherance of said conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. In or about March and April 1975, the defendants JOHN DOE, a/k/a "Freddie," and JOHN DOE, a/k/a "Neno," JUAN MEJIA, a/k/a "Guancho," JORGITA RIVERA, and JOHN DOE, a/k/a "Cristobal," delivered quantities of money to the defendant ANGEL MOLINA and other persons to finance the manufacturing of counterfeit Federal Reserve Notes.

2. In or about March, 1975, the defendant JOSE ARAUJO provided an apartment at 611 W. 156th Street, New York, New York.

3. On or about March 12, 1975, the defendants ANGEL MOLINA, a/k/a "Ariques," MANUEL ADAMES, a/k/a "Pelao," RAMON ORTEGA, a/k/a "Ramoncita," and RAFAEL CALZADO, a/k/a "Rafael Espinal," discussed the manufacture of counterfeit Federal Reserve Notes.

4. On or about March 13, 1975, the defendants ANGEL MOLINA, a/k/a "Ariques," MANUEL ADAMES, a/k/a "Pelao," CAESAR MORALES, FEDERICO RUIZ, a/k/a "Papito," JOSE ARAUJO, RAMON ORTEGA a/k/a "Ramoncita," and RAFAEL CALZADO, a/k/a "Rafael Espinal," installed equipment to counterfeit Federal Reserve Notes at 611 W. 156th Street, New York, New York.

5. On or about March 15, 1975, the defendant FEDERICO RUIZ, a/k/a "Papito," delivered a pump to 611 W. 156th Street, New York, New York.

6. On or about March 17, 1975, the defendants MANUEL ADAMES, a/k/a "Pelao," CAESAR MORALES, FEDERICO RUIZ a/k/a "Papito," and RAFAEL CALZADO, a/k/a "Rafael Espinal," had a meeting at 611 W. 156th Street, New York, New York.

7. On or about March 17, 1975, the defendants CAESAR MORALES and FEDERICO RUIZ, a/k/a "Papito," made photographic negatives of \$10, \$20 and \$50 Federal Reserve Notes.

8. On or about April 3, 1975, the defendants ANGEL MOLINA, a/k/a "Ariques", MANUEL ADAMES, a/k/a "Pelao", CAESAR MORALES and FEDERICO RUIZ, a/k/a "Papito," met and installed equipment to manufacture counterfeit Federal Reserve Notes at 739 Coster Avenue, Bronx, New York.

9. On or about April 5, 1975, the defendants MANUEL ADAMES, a/k/a "Pelao," CAESAR MORALES, FEDERICO RUIZ, a/k/a "Papito," JOHN DOE, a/k/a "Freddie" and JOHN DOE a/k/a "Neno" printed a large quantity of counterfeit Federal Reserve Notes at 739 Coster Avenue, Bronx, New York.

10. On or about April 10, 1975, the defendants MANUEL ADAMES, a/k/a "Pelao," CAESAR MORALES, FEDERICO RUIZ, a/k/a "Papito," JOHN DOE, a/k/a "Freddie," JOHN DOE, a/k/a "Neno," transferred approximately \$3,000,000 in counterfeit Federal Reserve Notes from 739 Coster Avenue to 1815 Bruckner Avenue, Bronx, New York.

11. On or about April 10 and 11, 1975, the defendants ANGEL MOLINA, a/k/a "Ariques," MANUEL ADAMES, a/k/a "Pelao," CAESAR MORALES, FEDERICO RUIZ, a/k/a "Papito," JORGITA RIVERA, JOHN DOE, a/k/a "Cristobal," JOHN DOE, a/k/a "Freddie," JOHN DOE, a/k/a "Neno," RAMON ORTEGA, a/k/a "Ramoncita," and RAFAEL CALZADO, a/k/a "Rafael Espinal," received their shares of approximately \$3,000,000 in counterfeit Federal Reserve Notes.



12. On or about April 12, 1975, the defendant JOHN DOE, a/k/a "Chuleria" received approximately two boxes of counterfeit Federal Reserve Notes.

13. On or about April 16, 1975, the defendants RAFAEL JACOBO, MANUEL ADAMES, a/k/a "Pelao", and FELIX IRRIZARRI met and sold approximately \$33,000 in counterfeit Federal Reserve Notes.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

In or about April, 1975, in the Southern District of New York, ANGEL MOLINA, a/k/a "Ariques," MANUEL ADAMES, a/k/a "Pelao," CAESAR MORALES, FEDERICO RUIZ, a/k/a "Papito," JUAN MEJIA, a/k/a "Guancho," JORGITA RIVERA, JOHN DOE, a/k/a "Cristobal," JOHN DOE, a/k/a "Freddie," JOHN DOE, a/k/a "Neno," JOSE ARAUJO, RAMON ORTEGA, a/k/a "Ramoncita," and RAFAEL CALZADO, a/k/a "Rafael Espinal," the defendants, unlawfully, wilfully and knowingly did make a photograph and impression in the likeness of an obligation of the United States without direction by a proper officer of the United States, and did make a plate, stone and other thing in the likeness of a plate designated for the printing of an obligation of the United States, to wit, a quantity of printing plates and negatives bearing images of genuine obligations of the United States, including \$10, \$20, and \$50 Federal Reserve Notes.

(Title 18, United States Code, Sections 474 and 2.)

COUNT THREE

The Grand Jury further charges:

In or about April, 1975, in the Southern District of New York, ANGEL MOLINA, a/k/a "Ariques," MANUEL ADAMES, a/k/a "Pelao," CAESAR MORALES, FEDERICO RUIZ, a/k/a "Papito," JUAN MEJIA, a/k/a "Guancho," JORGITA RIVERA, JOHN DOE, a/k/a

"Cristobal," JOHN DOE, a/k/a "Freddie," JOHN DOE, a/k/a "Neno," JOSE ARAUJO, RAMON ORTEGA, a/k/a "Ramoncita," and RAFAEL CALZADO, a/k/a "Rafael Espinal," the defendants, unlawfully, wilfully and knowingly, with intent to defraud, did make, forge and counterfeit obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$3,000,000.

(Title 18, United States Code, Sections 471 and 2.)

COUNT FOUR

The Grand Jury further charges:

In or about April, 1975, in the Southern District of New York, ANGEL MOLINA, a/k/a "Ariques," MANUEL ADAMES, a/k/a "Pelao," CAESAR MORALES, FEDERICO RUIZ, a/k/a "Papito," JUAN MEJIA, a/k/a "Guancho," JORGITA RIVERA, JOHN DOE, a/k/a "Cristobal," JOHN DOE, a/k/a "Freddie," JOHN DOE, a/k/a "Neno," JOSE ARAUJO, RAMON ORTEGA, a/k/a "Ramoncita," and RAFAEL CALZADO, a/k/a "Rafael Espinal," the defendants, unlawfully, wilfully and knowingly, did sell, exchange, transfer, receive and deliver false, forged, and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$3,000,000, with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Sections 473 and 2.)

COUNT FIVE

The Grand Jury further charges:

On or about April 10, 1975, in the Southern District of New York, ANGEL MOLINA, a/k/a "Ariques" the defendant, unlawfully, wilfully and knowingly, did sell, exchange, transfer, receive and deliver false, forged, and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$500,000, with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473.)



COUNT SIX

The Grand Jury further charges:

On or about April 10, 1975, in the Southern District of New York, MANUAL ADAMES, a/k/a "Pelao" the defendant, unlawfully, wilfully and knowingly, did sell, exchange, transfer, receive and deliver false, forged, and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$400,000, with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473.)

COUNT SEVEN

The Grand Jury further charges:

On or about April 10, 1975, in the Southern District of New York, CAESAR MORALES, the defendant, unlawfully, wilfully and knowingly, did sell, exchange, transfer, receive and deliver false, forged, and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in an amount in excess of \$250,000, with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473.)

COUNT EIGHT

The Grand Jury further charges:

On or about April 10, 1975, in the Southern District of New York, FEDERICO RUIZ, a/k/a "Papito" the defendant, unlawfully, wilfully, and knowingly did sell, exchange, transfer, receive and deliver false, forged, and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in an amount in excess of \$250,000, with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473.)

COUNT NINE

The Grand Jury further charges:

On or about April 10, 1975, in the Southern District of New York, JORGITA RIVERA, the defendant, unlawfully, wilfully and knowingly, did sell, exchange, transfer, receive and deliver false, forged, and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$85,000, with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473.)

COUNT TEN

The Grand Jury further charges:

On or about April 10, 1975, in the Southern District of New York, JOHN DOE, a/k/a "Cristobal," unlawfully, wilfully and knowingly, the defendant, did sell, exchange, transfer, receive and deliver false, and forged, counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$50,000, with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473.)

COUNT ELEVEN

The Grand Jury further charges:

On or about April 10, 1975, in the Southern District of New York, JOHN DOE, a/k/a "Freddie," the defendant, unlawfully, wilfully and knowingly, did sell, exchange, transfer, receive and deliver false, forged, and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$20,000, with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473.)



COUNT TWELVE

The Grand Jury further charges:

On or about April 10, 1975, in the Southern District of New York, JOHN DOE, a/k/a "Neno", the defendant, unlawfully, wilfully and knowingly, did sell, exchange, transfer, receive and deliver false, forged, and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$20,000, with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473.)

COUNT THIRTEEN

The Grand Jury further charges:

On or about April 10, 1975, in the Southern District of New York, RAMON ORTEGA, a/k/a "Ramoncita," the defendant, unlawfully, wilfully and knowingly, did sell, exchange, transfer, receive and deliver false, forged, and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$20,000, with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473.)

COUNT FOURTEEN

The Grand Jury further charges:

On or about April 10, 1975, in the Southern District of New York, RAFAEL CALZADO, a/k/a "Rafael Espinal," the defendant, unlawfully, wilfully and knowingly, did sell, exchange, transfer, receive and deliver false, forged, and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20, and \$50 Federal Reserve Notes in the approximate amount of \$40,000, with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473.)

COUNT FIFTEEN

The Grand Jury further charges:

In or about April, 1975, in the Southern District of New York, JOHN DOE, a/k/a "Chuleria," the defendant, unlawfully, wilfully and knowingly did sell, exchange, transfer, receive and deliver false, forged, and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$500,000 with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473.)

COUNT SIXTEEN

The Grand Jury further charges:

On or about the 14th day of April, 1975, in the Southern District of New York, RAFAEL JACOBO, and MANUEL ADAMES, a/k/a "Pelao," the defendants, unlawfully, wilfully and knowingly did sell, exchange, transfer, receive and deliver false, forged and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20, and \$50 Federal Reserve Notes in the approximate amount of \$2,300, with the intent that the same be passed, published and used as true and genuine.

(Title 18, United States Code, Section 473 and 2.)

COUNT SEVENTEEN

The Grand Jury further charges:

On or about the 16th day of April, 1975, in the Southern District of New York MANUEL ADAMES a/k/a "Pelao," RAFAEL JACOBO, and FELIX IRRIZARRI, the defendants, unlawfully, wilfully and knowingly, did sell, exchange, transfer, receive and deliver false, forged and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes, in the approximate amount of \$33,000, with the intent that the same be passed, published and used as true and genuine.

(Title 18, United States Code, Sections 473 and 2.)



MD:jp  
75-1393  
d-718

COUNT EIGHTEEN

The Grand Jury further charges:

On or about the 16th day of April, 1975, in the Southern District of New York MANUEL ADAMES, a/k/a "Pelaq" the defendant, unlawfully, wilfully and knowingly did sell, exchange, transfer, receive and deliver false, forged and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$200, with the intent that the same be passed, published and used as true and genuine.

(Title 18, United States Code, Section 473.)

COUNT NINETEEN

The Grand Jury further charges:

On or about the 16th day of April, 1975, in the Southern District of New York, FELIX IRRIZARRI, the defendant, unlawfully, wilfully and knowingly, with intent to defraud, did keep in his possession and conceal certain falsely made, forged and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$430.

(Title 18, United States Code, Section 472.)

Albert E. Asstett  
FOREMAN

Paul J. Curran  
PAUL J. CURRAN  
United States Attorney





United States District Court  
SOUTHERN DISTRICT OF NEW YORK  
THE UNITED STATES OF AMERICA

vs.

ANGEL MOLINA, a/k/a "Arique,"  
et al.,

Defendants.

INDICTMENT

S. 75 Cr.

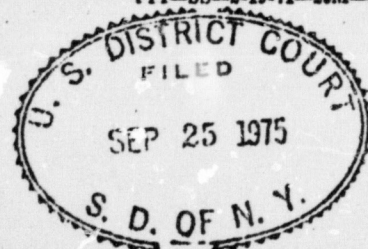
PAUL J. CURRAN

United States Attorney.

A TRUE BILL

Albert C. Anstett  
Foreman.

FPI-85-2-19-71-20M-6930



ON DEFTS ANGEL MOLINA, CRISTOBAL  
FEDERICO RUIZ, JORGITA RIVERA, JOHN DOE,  
A/K/A "CRISTOBAL" JOHN DOE, A/K/A "FREDDIE"  
JOHN DOE, A/K/A "JOHN DOE",  
RAMON CRISTOBAL, A/K/A "CRISTOBAL"  
JOHN DOE, A/K/A "CRISTOBAL"  
INDICTMENT ORDERED

October 6, 1975- Indictment ordered  
unsealed.

Deft. Manuel Adames - (Atty. not present)  
Court directs a N/G plea be entered.  
Bail as fixed in superseded case  
75 Cr. 740 continued.

Deft. Juan Mejia - (Edward Ranger  
assigned as Counsel) Pleads N/G.  
thru interpreter Anita Lavallos (sworn)  
Bail \$2000.00 sec. by \$2000. cash  
Deft. ROR to 10/9/75 at 4pm. At which  
time he is to post bail as indicated.  
Ordered F/P. Go surrender passport to  
AUSA New York. (over)



10/6/75- Jorgita Rivera - (deft. and interpreter present. ~~Legal~~ Counsel not present.

Court directs a plea of N/G be entered. Bail \$35,000. Continued. Continued (remanded in lieu of bail).

Assigned to Cooper, J as related and superseding indictment 75 Cr. 740.

10/6/75 Deft. <sup>John Doe a/k/a "Freddie" Cannella</sup> Freddie Almieda - (Atty: Frederic Plouffe - N/G - Deft. continued remanded in lieu of bail fixed by Magistrate \$10,000.

Deft. Jose Arango - (Atty: Robert W. Plouffe - N/G. Continued remanded in lieu of bail fixed at \$10,000. ORB sec. by \$1,000. cash.

Deft. Felix Orizari - deft. not present. Atty. Theodore Greger present. Court directs plea of N/G be entered. Bail continued.

Deft. Rafael Jacobo (Atty. present) Court directs a plea of N/G be entered (deft. not present).

Future case assigned to Cooper, J as related to and superseding indictment 75 Cr. 740.

Cannella



NOV 3 - 1975 Deft. Pleads guilty thru Interpreter Braciella  
Deft. Manuel Adames Withdraws his plea  
(Atty. Present Seymour Landau) of not guilty +  
Pleads guilty To counts 3, 4 + 17 - Pre sentence  
Investigation Ordered. Probation notified.  
Sentence date open. Deft. Remanded.

Cooper, J.

NOV 6 - 1975 Deft. Jacobo (Atty. Present A. Isadore Eiba  
Withdraws his plea of not guilty + Pleads guilty  
to count #17 only - Pre sentence report Ordered  
Probation notified. Present bail condition continue  
Sentence open date.

Cooper, J.

NOV 6 - 1975 Deft. John Doe, A/K/A "NENO"  
Deft. Rafael Rubaldo Hicchi - Garcia. Produce  
on bench warrant. Court directs a not guilty  
plea be entered. (Deft. Atty. not Present.)  
bail \$ 10,000.00 P.R.B. Unsecured bond to be signed  
by the Deft. wife. To be posted by 11-7-75.  
At 10:00 Am.

Cooper, J.

DEC 11 1975 Deft. John Doe A/K/A Freddie Alameda  
(Atty. Present Frederick Cohen + Interpreter  
Edward Landreth) Withdraws his plea of not guilty  
+ Pleads guilty To counts 1 + 11 - Pre sentence report  
Ordered. Probation notified. Sentence open date  
Deft. Remanded in custody of U.S. Marshal.

Cooper, J.

JAN 5 1976 Trial Begun. Deft. Rivera, John Doe aka "Neno"  
Ayanzo, John Doe aka Chulua, and deft Irizani

JAN 6 1976 Trial Continued

JAN 7 1976 Trial Continued

q JAN 8 1976 Trial Continued.

JAN 9 1976 Trial Continued.

JAN 12 1976 Trial Continued.

JAN 13 1976 Trial Continued.

JAN 14 1976 Trial Continued.

JAN 15 1976 Trial Continued. Deft. Felix Irizarri withdraws his plea of not guilty & pleads guilty to Counts 1 + 17 (During Trial) Pre sentence report ordered, Probation notified. Sentence date to be after the instant trial. Present bail condition continued. Cooper, J.

JAN 16 1976 Trial Continued.

JAN 19 1976 Trial Continued. Government moves to dismiss Indictment - Against the deft.

Antonia Correa - acquittal Granted

JAN 20 1976 Trial continued.

JAN 21 1976 Trial Continued + Concluded

Jury Verdict at 10:45 PM. Special Verdict

Deft. Jorgita Rivera Guilty on Counts 1, 2, 3, 4 +

Deft. Jose ~~Alvarez~~ AKA AS John Doe + none guilty on Counts 1, 2, 3 + 4

Deft. Rafael Hickey guilty on Counts 1, 2, 3, 4

Jury polled as to all defts.

Motions made + Denied as to all defts.

Pre sentence report Ordered as to all defts +

Probation notified - Sentences 2-18-76 at

12:45 PM. - all defts. Remanded

Cooper, J.  
L



<sup>man</sup>  
a FEB 18 1976 Deft. Jorgita Rivera Sentenced  
atty - present John P. Curley.) on each of Counts  
2, 3, 4 + 9 to Ten (10) years.  
Five (5) years on Count 1. Ten years on Count 2.  
Ten (10) years on Count 3. Ten (10) years on  
Count 4 and Ten (10) years on Count 9  
To run Concurrently. Deft. to be given  
Credit for time already served. Deft.  
advised of his right to appeal.  
Deft. Remanded. Cooper, J.

---

Deft.  
FEB 18 1976 Jose Arango Sentenced (Atty. Present  
~~Ralph Nader~~  
a ~~Victor J. Her~~) on each of Counts  
1, 2, 3 + 4 To One (1) year. each sentence  
To run Concurrently. Deft. to be given  
Credit for time already served.  
Deft. advised of his right to appeal. Cooper, J.  
Deft. Remanded

---

FEB 18 1976 Deft. Rafael Hichez A/K/A JOHN DO  
A/K/A neno Sentenced (Atty. Present Victor J. Her  
To Three (3) years on each of Counts 1, 2, 3,  
4, 5 To run Concurrently. Deft. to be given  
Credit for time already served.  
Deft. advised of his right to appeal.  
Deft. Remanded. Cooper, J.

US v.  
Rivera  
1/21/76

[Judge  
Cooper]

mcsr

1514

UNITED STATES OF AMERICA

- v s -

S 75 Cr. 936

JORGITA RIVERA, et al.

January 21, 1976

[10:00 a.m.]

C H A R G E       O F       T H E       C O U R T

[Trial resumed; jury present.]

THE COURT:    Mr. Foreman, ladies and gentlemen  
of the jury:

I would be sadly remiss if I failed at the very  
outset of the Court's charge to the jury to express to each  
and every one of you the Court's deep satisfaction at the  
way you have attended to your obligation as sworn jurors  
in this case.    It is evident that so far you have dis-  
charged your duty with fidelity.    You have followed the  
evidence, the testimony, the proceedings with intelligence,  
with understanding and absorbing interest.    I'm quite  
satisfied that no single factual matter relating to the  
issues before us has escaped your attention.

You have been silent throughout and when your  
turn comes to speak I have every confidence, and I'm sure  
counsel and both sides join me in this, that in accordance  
with the solemnity of your oath and the high order of your  
conscience you will pronounce the justice that is due in

1  
2 this case.

3 Your selection was the result of great care  
4 exercised by the Court and counsel. Your mission is not  
5 easy. We are sure you did not expect it to be.

6 There was a great philosopher, a Nobel Prize  
7 winner, Albert Camus, and he summed it up for all of us,  
8 for you, for the Judge, for counsel, when he observed that  
9 "Justice dies from the moment it becomes a comfort, when it  
10 ceases to be a burning reality, a demand upon one's self."

11 We are indebted to all counsel for their concern  
12 with the interests of their respective clients. All of us  
13 involved in this important case see clearly our common  
14 commitment to community and defendants alike. I said  
15 important case because every case that comes on for trial  
16 is important. There is nothing in the Constitution that  
17 says that the only time it is important is when you have  
18 celebrated people, international characters, people of  
19 great wealth, power, et cetera. We boast in America that  
20 the same justice meted out to the powerful goes to the meek  
21 and the humble and the poor and the ignorant. If we demean  
22 it we are fakers. We can't speak out of both sides of  
23 our mouths.

24 How would you like a surgeon to say: "Well, I'm  
25 not particularly cautious or worried when I operate on a



1  
2 poor man. I watch my step when I'm operating on a fellow  
3 that is going to give me a big fee."

4           Would you like that? Or "Because he's black,  
5 so I give him a twelve-inch cut instead of an eight-inch  
6 cut." Would you like that?

7           Likewise with justice. You are here to do  
8 nobody any favors. Your power in this case is enormous,  
9 but don't exaggerate it. Approach it with humility. I  
10 speak plainly because out of a welter of experience,  
11 seeing life in the raw, the naked, the dirt, the filth as  
12 well as the exalted behavior of human beings, all in the  
13 melting pot, I have long ago concluded that when the  
14 fundamental principles that govern human beings as a  
15 civilized society are abandoned even to a small degree,  
16 that society begins to crumble. Your oath either means  
17 something or we are lost.

18           Let me say a word about objections that counsel  
19 have interposed from time to time. Please understand that  
20 counsel not only have the right but it is indeed their  
21 duty on the offer of certain evidence to press whatever  
22 legal objections there may be to its admission.

23           With those comments about counsel we take leave  
24 of them and we concern ourselves exclusively with the  
25 parties involved in this controversy: The Government,

2 otherwise known as the plaintiff in this proceeding, on  
3 one side, and each defendant on the other.

4 This is not a contest in salesmanship, it isn't  
5 a battle of wits, it is not a clash of personalities; it  
6 is by law pronounced to be a conscientious search for the  
7 truth, and if you can leave this courthouse with the firm  
8 conviction that your verdict is consistent with the truth,  
9 then indeed your duty will have been done because the only  
10 triumph in any litigated case, whether it is civil or  
11 criminal in nature, is the triumph of the truth.

12 As I told you when you were being selected,  
13 every defendant, every defendant regardless of his race,  
14 creed, color, age, regardless of impediments of any kind,  
15 is entitled to a fair trial under our law and the very  
16 same legal propositions of law must be charged by the  
17 Court to the jury regardless of the defendant involved.  
18 Whether he is successful or waiting for success, whether  
19 he is ignorant or well informed, crude or polished, highly  
20 esteemed or despised, whether he is a member of a good or  
21 bad family, yes, even the avowed enemy of our society,  
22 each is entitled to his day in court and let justice be  
23 done according to the facts, according to the law of the  
24 case. And that is America.

25 Whether the Judge's ways appeal to you, whether





1  
2 you like this lawyer or you don't like that lawyer, what  
3 has that got to do with your mission? Absolutely nothing.  
4 When you go into a store to buy a piece of merchandise  
5 and you discuss the quality of the merchandise, what has  
6 the pleasantness or unpleasantness of the salesman got to  
7 do with it? What has whether the store was a veritable  
8 emporium or a rundown shack got to do with it? Some  
9 jurors never seem to get that in their heads. What is so  
10 hard about that?

11           You do not sit here as barons of old who as-  
12 sembled and by whim, favor or caprice, by likes or dislikes,  
13 as we read in the books in high school, decided who was  
14 going to be flung into a jail and who went free and who  
15 got the bag of gold or who was compelled to resign in  
16 abject poverty. You have no such power any more than I  
17 have. Your duty is to be the judges of the facts and  
18 apply the law to the facts, no matter who likes it or who  
19 doesn't like it and let the chips fall where they may.  
20 You are here to determine the guilt or innocence of each of  
21 these defendants separately. Neither you or I are here  
22 to please or favor anyone. We have a sworn duty and must  
23 discharge it if justice is to prevail.

24           After all, it is your justice, your courthouse  
25 for black, for white, for poor, for rich as much as it is

2 my courthouse. It is your burden as much as my burden  
3 in America and you have got to get exercised about the  
4 doing of justice as much as I.

5 We have reached the point where you are soon  
6 to undertake your final function as jurors and here you  
7 perform one of the most sacred obligations and responsi-  
8 bilities of citizenship. You are, make no mistake about  
9 it, the ministers of justice. I told you that in great  
10 detail when you were being selected. It was all placed  
11 openly before you. You were asked, in essence, whether  
12 you had the capacity and the understanding to assume that  
13 great responsibility and each of you said yes.

14 Under your oath you are to approach your duties  
15 in an attitude of complete fairness, complete impartiality  
16 and to appraise the evidence calmly, deliberately and  
17 firmly, as was emphasized by me when you were being  
18 selected, without the slightest trace of sympathy, bias or  
19 prejudice for or against the Government or the defendants,  
20 who are the only parties to this controversy.

21 What I have just said is as important a part  
22 of this charge by the Court as any other part. Never  
23 forget for an instant that you and you alone are the sole  
24 and exclusive judges of the facts. In my time after the  
25 conclusion of trials some jurors have asked to see me, as





1 mcsr

2 I have indicated before, and I learned that one of the  
3 main things that motivated the determination was sympathy.  
4 What I have just got through saying to you, as I said to  
5 them, is that sympathy has nothing at all to do with the  
6 case and must not be exercised either for the Government  
7 or for a defendant on trial. That is not your power.  
8 That is not your function, and I have ~~seen~~ many a mortal  
9 blow dealt to justice where a jury ~~departs~~ from the strict  
10 line of obligation under law. I have ~~seen~~ horrible results  
11 from a failure by the jury to follow the facts and the  
12 law.

13 The equivalent of what I have just said is found  
14 when it comes to law where the Judge is the sole and  
15 exclusive judge of the law in the case. You heard counsel  
16 press various legal points before me and when I disagreed  
17 you heard me take a definite position. You do likewise  
18 as to the facts, no matter who it suits. I learned since  
19 I was a boy on my own to be satisfied with the applause  
20 of my own conscience and that should be your guide.

21 The fact that the Government is a party entitles  
22 it to no greater consideration than that accorded to any  
23 other party to the litigation and, by the same token, of  
24 course, the Government is entitled to no less consideration.

25 And that is America. There is no country in the



1 civilized world that has a proposition of law like that --  
2 that when the great, powerful Government comes in, not as  
3 a lot of people think, representing the Counterfeit Division  
4 of our Government -- when the Government comes into court  
5 it comes on behalf of the people. This is a democracy.  
6 The Government is the agent of the people, and so when the  
7 Government comes into court it has no more standing than  
8 the other litigants. In France as soon as there is a case  
9 by the Government, the Government, before a word is spoken,  
10 is already on second base. That is true in other countries,  
11 and here we say nothing doing. You both start at the same  
12 departing line.  
13

14 You will please bear in mind that every word of  
15 the Court's charge applies to each defendant separately,  
16 for guilt is personal. What do I mean by that, guilt is  
17 personal? It means that just because one is guilty you  
18 can't tar with the same brush everybody who happens to be  
19 there with guilt. Guilt is personal.

20 You witnessed anew, or it was brought to your  
21 attention, that Irrizarri, who was a defendant on trial,  
22 plead guilty and then was called as a witness. Well,  
23 wouldn't it be terrible if just because Irrizarri plead  
24 guilty anybody on the jury were to say, "Then the others  
25 must be guilty, too"? Guilt by association. That is as

1 bad as just because some person of a certain creed or  
2 group or religious entity does a wrong, that makes people,  
3 some of them, wipe him all out. What a hideous kind of  
4 thinking that is. What barbarism.  
5

6 And so you have to determine the guilt of these  
7 three defendants on trial and you have to decide it  
8 separately as to each. You add it all up as to each one  
9 separately and you've got to come in with a verdict as to  
10 each one separately on each of the six separate charges  
11 which are embraced in this indictment before us. And I'll  
12 develop each one of them for you. It is not difficult.  
13 Just be patient. Think, think, think.

14 Remember that each count is a separate criminal  
15 charge and each count, therefore, must be weighed separately.

16 Now, what about this business of different  
17 counts? Well, there was a time when I began to practice  
18 law where every single count or charge against a defendant  
19 was the subject of a separate indictment and the District  
20 Attorney or the Prosecutor would select the indictment that  
21 he wanted to proceed on first and then when he got through  
22 with that he had the right, if he wanted, to go and hold  
23 that same defendant to a count on the next indictment.  
24 Well, with the development of the law the law, in essence,  
25 said: Look, now, whatever you got against a man, embrace it



1 in one paper. Did he commit crimes or a crime? Which is  
2 it? Is there more than one? Very well then, list them  
3 all at one time, that you did this on such and such and  
4 such a day; that you did something else on another day;  
5 that you did such and such a thing on a third day. That  
6 would make three separate crimes. Let him know the totality  
7 of the charge against him and let there be one trial in  
8 which all of the charges against him are considered and  
9 disposed of by a separate verdict. Nothing difficult about  
10 that. That is common sense.

11  
12 You look at the total evidence. You apply the  
13 law to that evidence and you say: Is this defendant guilty  
14 or not guilty, regardless of whether another defendant is  
15 guilty.

16 The law says that jurors carefully selected  
17 have capacity to separate the totality of the evidence and  
18 apply the evidence, as you weigh it, to each defendant  
19 separately and distinctly. We say with great pride, and  
20 we mean it, that all parties, Government and individuals  
21 alike, stand equal before the Bar of Justice. Your final  
22 role is to decide the fact issues that are in this case.  
23 You and only you, not the Judge, not counsel, are the  
24 exclusive judges of the facts. I told that when you were  
25 being selected. I told you how vital it was. I even tell

mcsr

jurors it is a heavier burden than laying down the law.

You and you alone pass upon the weight of the evidence. You and no one but you determine the believability or the credibility of each witness. You and no one but you resolve such conflicts as there may be in the testimony of witnesses and you and only you, the jury, draws such reasonable inferences as may be warranted by the evidence.

It is for you, the jury, the jury only, to make an independent objective, detached assessment of the total evidence. I venture the suggestion that with all the sincerity in the world, even the advocates on either side of the table cannot do that completely, for the interests of their respective clients are bound to rub off on them, even subconsciously. So you see why the law names you and you alone to pronounce the last word, so to speak, on what the total trial record points to as to the guilt or innocence of each defendant on trial before you.

This may surprise you, but a Federal trial judge has a perfect right, if he wishes, unlike the State Court, to comment on the evidence. I can give you, if I wanted to, my estimate of each witness. I can say with regard to the witness, "I wouldn't believe him under a stack of bibles from the floor to the ceiling," or I could say



1 with regard to another witness, "He spoke the Gospel  
2 truth." All I need to do is just add, "But you are not  
3 bound by my statement."  
4

5 So you see, a Federal Judge doesn't have to  
6 by motion or by movement or by a twitch of the head indi-  
7 cate how he feels about the evidence as the trial goes  
8 on and try to influence a jury. I've got the right to  
9 speak right out and tell you. All I need to do is just  
10 remind you, however, that you are the judges of the facts.

11 I shall do no such thing. I never have. I  
12 don't believe that I should praise you, do you honor, ask  
13 all to rise as you enter and as you leave, speak of you as  
14 the ministers of justice and then invade your orbit of  
15 function. To me that is like talking out of both sides  
16 of one's mouth. That is your responsibility and you are  
17 going to have to meet it and I have no doubt that you will.

18 What more can a judge say that what I told you  
19 when you were being selected: That the fact finding  
20 function often proves more burdensome than laying down the  
21 law. I know, for the greater part of my own life has been  
22 spent as a fact finder. Please understand that I shall  
23 not refer to any evidence, except possibly by way of  
24 example. Since I have the power to talk about the evidence  
25 and even give you my evaluation of it, I forbid you from

1  
2 reading into the tone of my voice or the emphasis that I  
3 may apply here or there to a proposition of law how the  
4 Judge feels about the facts. If I wanted to tell you I  
5 could tell you outright, since I have a perfect right to  
6 do so.

7 I refuse to believe that ~~when~~ a Judge comments  
8 on the evidence that at least one and possibly more of  
9 the fact finders are not influenced by ~~his~~ assessment.  
10 I don't want to as much as by a shadow indicate what I  
11 think as to the facts. My function is to instruct you  
12 as to the law and it is your sworn duty to accept the law  
13 as I state it to you in these instructions and apply it  
14 to the facts as you, the jury, find them. Your oath  
15 compels you to apply the law regardless of your personal  
16 opinion as to the wisdom or the rightness of any part of  
17 the law. I speak very plainly when I tell you that your  
18 oath compels you to apply the law as laid down in these  
19 instructions. It is unthinkable that a jury would do  
20 otherwise, for that would be the same as a lawyer violating  
21 his oath, for which he could be disbarred, or a Judge  
22 violating his oath, for which he could be removed from  
23 judicial office.

24 You must never forget that you sit here as  
25 American ministers of justice compelled by your oath and



1 MCSF

2 common sense to determine the guilt or innocence of each  
3 of these defendants based exclusively -- if I could spell  
4 that word exclusively from the floor to the ceiling I  
5 would do it -- exclusively on the total trial record before  
6 you. And what is that? That consists of the sworn testi-  
7 mony, the exhibits, the stipulations entered into by  
8 both sides and the instructions of the Court.

9 Now, with regard to any fact matter, it is  
10 your recollection and yours alone that prevails. Anything  
11 that counsel, either for the Government or for the defense,  
12 may have said with respect to matters in evidence, whether  
13 during the trial or in a question or in an argument or  
14 in summation, is not to be substituted for your own  
15 recollection of the evidence, and so anything that I may  
16 refer to, if my recollection doesn't accord with yours,  
17 your recollection prevails. Your recollection is para-  
18 mount.

19 Before we consider each charge against each  
20 defendant and what is required to sustain each charge  
21 against each defendant, there are certain preliminary  
22 observations that are in order, certain principles of law  
23 that are applicable to every criminal case, and to some  
24 of which I referred at the time of your selection as jurors.

25 Such is human nature, ladies and gentlemen of

1 the jury, that people apply the term boilerplate to these  
2 fundamental principles of law which have been hammered out  
3 by blood and sweat and are a part and a glorious part of  
4 our country's judicial history. They are not boilerplate  
5 to me. I have said them hundreds of times and on each  
6 occasion regard myself privileged to pronounce these  
7 sacred propositions of law. Without them we are in a  
8 jungle, and remember that, for you, for your children and  
9 your children's children.  
10

11 One of these vital concepts is that an indictment  
12 -- just think of the beauty and power and the majesty of  
13 the law -- that an indictment is nothing but a charge.  
14 It informs the party accused of what he is being accused  
15 of. It is absolutely no indication of guilt. If it were  
16 then every time there was a charge it would automatically  
17 follow with a finding of guilt, and that is stupid  
18 thinking. And so I expect you to be as firm as the Judge.  
19 This is a matter of spirit, understanding, and when a juror  
20 says to you, "But the Grand Jury indicted him," you look  
21 that person in the eye: "You heard the Judge say that  
22 that has absolutely nothing to do with guilt or innocence.  
23 If you want him to say it again, let's go out and ask  
24 Judge Cooper."

25 Or if someone says, like one of the attorneys



1  
2 did in summation in speaking of a witness that took the  
3 stand before you, that he got or received sometime in the  
4 past a suspended sentence -- before what Judge? Under  
5 what circumstances? What happened, what was involved  
6 there? We don't know. But the argument given to you was  
7 that there was a much more powerful person than the client  
8 represented by that advocate and yet he got a suspended  
9 sentence and he comes into court and he tells a tissue  
10 of lies against a little man on trial, that man who should  
11 have gotten a substantial jail sentence. That kind of  
12 talk.

13 That is not reasoning. That is not the kind of  
14 thinking you are here for. That is not the measurement  
15 you are to apply. What has that to do with a determination  
16 of guilt or innocence based on the facts adduced at the  
17 trial?

18 And so an indictment is merely a method by  
19 which persons accused by a Grand Jury of crimes are brought  
20 into court and their guilt or innocence is determined by  
21 a trial jury such as you are. What could be a finer  
22 example of fairness than that? When America says that if  
23 a Grand Jury indicts someone that is merely a charge, and  
24 the Grand Jury and the American people know full well that  
25 that charge has to be sounded out in a trial such as this

mcsr

where guilt or innocence is found by a verdict. What a far cry from the rack and torture: You admit this, that and the other or we'll separate your bones.

Each defendant here has pleaded not guilty and he has a perfect right to plead not guilty and the Government under our law has the burden of proving guilt beyond a reasonable doubt, which I shall define shortly, as I shall other terms that I use. We say in America when the Government on behalf of the people comes into court the Government has no advantage, which I have already pointed out: You've got the right to accuse but you accuse, do you, then go ahead and prove it and prove it beyond a reasonable doubt. And the Government says here that it has done exactly that. And each defendant takes the contrary position with equal emphasis, and so the ball passes to you, the jury.

Under our law, then, the Government has the burden of proving each charge, each count against each defendant and proving each count as to each defendant beyond a reasonable doubt. Now, when I say that, and the way I emphasize things, that doesn't mean to imply that I think the Government has not done so or that the Government has succeeded. I've got to lay down these principles of law so that you understand me and pay strict



Now, this burden cast upon the Government under the law to prove a defendant guilty beyond a reasonable doubt, that burden never shifts, it never goes from the Government to the defendant. It never goes from the Government, I repeat, to the defendant, at any time. The Government always has that burden from start to finish. It is our law that a defendant does not have to prove his innocence. On the contrary, a defendant is presumed to be innocent of the accusations contained in the indictment. As I told you when you were being selected, this presumption of innocence is a protective shield covering each defendant on trial in any criminal case. It continues in favor of the defendant throughout the entire trial. It continues in his favor right as I am talking to you now, this very moment. Our law says that that shield of presumption of innocence surrounds a defendant during the course of the entire trial. It even continues to shield the defendant while you are deliberating. It is removed, this presumption of innocence of a defendant, only when you, the jurors, declare that guilt has been

1  
2 established beyond a reasonable doubt. Then that protective  
3 shield has been pierced. It falls away from the defendant  
4 and it no longer protects him.

5 In other words, this presumption is an instrument  
6 of proof created by the law in favor of one accused where-  
7 by his innocence is established until such evidence is  
8 introduced to overcome the proof the law has created.

9 The presumption of innocence is sufficient to  
10 acquit a defendant of the crime charged against him unless  
11 it is overcome by evidence that satisfies your mind beyond  
12 a reasonable doubt of a defendant's guilt, and unless you  
13 are so satisfied, it is your sworn duty to find the  
14 defendant not guilty.

15 If, on the other hand, you do not have a  
16 reasonable doubt as to guilt, it is your sworn duty to  
17 find the defendant guilty.

18 Now, what is this reasonable doubt? There is  
19 no mystery about it. What has the law to say about  
20 reasonable doubt? That is what you apply. How much  
21 evidence does the Government have to place before a jury  
22 in any criminal case? Must it be evidence beyond any  
23 possible doubt? Absolutely no. This is not a mathematical  
24 proposition you are dealing with where a string of figures  
25 are placed on a piece of paper and we can all add them up



1  
2 and come to a total. The words are reasonable doubt, and  
3 they mean that there is a doubt founded in reason, not  
4 imaginary, but founded in reason and arising out of the  
5 nature of the evidence in the case or the lack of evidence  
6 in the case. It means a doubt which a reasonable person  
7 has after carefully weighing all the evidence. It means  
8 a doubt that is substantial and not shadowy. Reasonable  
9 doubt is a fair doubt, a doubt which appeals to your  
10 reason, your judgment, your common sense, your understanding  
11 and arising from the state of the evidence. A defendant  
12 is not to be convicted on suspicion, conjecture or even  
13 impressive evidence which does not rise to the dignity of  
14 significant persuasiveness.

15 Reasonable doubt is not caprice, whim, specula-  
16 tion. It is not an excuse to avoid the performance of  
17 an unpleasant duty. It is not sympathy for a defendant  
18 or a desire to uphold the Government. If after a careful  
19 and impartial consideration of all the evidence in the  
20 case from start to finish you can candidly and honestly  
21 say that you are not satisfied of the guilt of a defendant  
22 and that you do not have an abiding conviction of his  
23 guilt which amounts to a moral certainty, then you have a  
24 reasonable doubt and in that circumstance it is your duty  
25 to acquit.

1                   mcsr  
2                   On the other hand, if after such a fair and  
3                   impartial consideration you can candidly and honestly say  
4                   that you are satisfied of the guilt of the defendant, that  
5                   you do have an abiding conviction of his guilt which  
6                   amounts to a moral certainty, I mean such conviction or  
7                   certainty as you would be willing to rely upon and act  
8                   upon in important and weighty matters in your own personal  
9                   affairs in your own private lives, then you have no  
10                  reasonable doubt and in that circumstance it is your duty  
11                  to convict.

12                  A reasonable doubt does not mean a positive  
13                  certainty or beyond all possible doubt. You are dealing  
14                  with human beings, with flesh, with bone, with tissue.  
15                  If the rule were that you had to be satisfied beyond all  
16                  possible doubt hardly anyone, no matter how guilty, could  
17                  ever be convicted, for it is practically impossible for  
18                  a person to be absolutely and completely convinced of any  
19                  controverted fact which by its very nature is not suscep-  
20                  tible of mathematical certainty.

21                  So, in consequence, the test in a criminal case  
22                  is that it is sufficient if the guilt of a defendant is  
23                  established beyond a reasonable doubt, and not beyond all  
24                  possible doubt.

25                  The indictment names 15 defendants in all.



1  
2 Only three are on trial before you. They are the only  
3 ones whose guilt or innocence you must announce in your  
4 verdict, although, as I will explain to you shortly, in  
5 considering their guilt or innocence you may have to  
6 determine the nature of the participation, any, of the  
7 others. In the determination of guilt or innocence you  
8 must bear in mind, as I told you repeatedly, that guilt  
9 is personal. The guilt or innocence of each defendant on  
10 trial before you must be determined separately with respect  
11 to him solely on the evidence presented against him or the  
12 lack of evidence.

13 The defendants on trial are named in six counts.  
14 Each count, as I told you, charges a separate crime.  
15 Certainly there are facts and elements common to more than  
16 one count. But you must consider each count separately and  
17 return a separate verdict of guilty or not guilty as to  
18 each defendant on each count in the indictment.

19 Let us sum up these six counts. What do they  
20 amount to? Nothing complicated about them. Each of these  
21 three defendants is charged in Count 1, which is commonly  
22 called the conspiracy count, so that each one is charged  
23 with conspiracy. Right?

24 Count 2 charges each one with making counterfeit  
25 plates.

Count 3 charges each one of these three with making counterfeit notes.

Count 4 charges each of these three on trial with transferring these counterfeit notes, so that each one of them is charged with the same counts up to the point I have just discussed. Each is charged with Counts 1, 2, 3, 4. That is easy to remember.

On top of that Rivera is charged with an additional count, Count 9 with illegally selling, exchanging, transferring, receiving and delivering counterfeit notes, and on top of those same four, 1, 2, 3 and 4, the defendant Hichez is charged in Count 12 with illegally selling, exchanging, transferring, receiving and delivering counterfeit notes.

So, to sum it up, each one of the three is charged with Counts 1, 2, 3 and 4. In addition, Rivera is charged with Count 9. In addition, Hichez is charged with Count 12.

Now, let's look at the law. We are concerned here with violations of the Federal law and so we go to Congress. What is the law of the land binding you, me and everyone? What does the law say? A provision of the United States Code provides in pertinent part as follows:

"If two or more persons conspire...to commit



1 mcsr

2 any offense against the United States...and one or more  
3 said persons do any act to effect the object of the con-  
4 spiracy, each of such persons commits a crime."

5 That, in essence, is the law with regard to  
6 conspiracy, and I shall enlarge upon it as I undertake to  
7 explain it.

8 Another provision of the United States Code  
9 provides in pertinent part:

10 "Whoever, with intent to defraud, falsely  
11 makes, forges, counterfeits, or alters any obligation or  
12 other security of the United States" commits a crime.

13 Let's take a look at another provision of the  
14 United States Code which provides in pertinent part as  
15 follows:

16 "Whoever...sells, exchanges, transfers, receives,  
17 or delivers any false, forged, counterfeited, or altered  
18 obligation or other security of the United States, with  
19 the intent that the same be passed, published or used as  
20 true and genuine", commits a crime.

21 And then there is a provision also in the  
22 United States Code which reads:

23 "Whoever makes or executes any plate, stone,  
24 or other thing in likeness of...any plate designated for  
25 printing of any obligation or other security of the United

1 mcsr

2 States; or

3 "Whoever prints, photographs, or in any manner  
4 makes or executes any engraving, photograph, print, or  
5 impression in the likeness of any such obligation or other  
6 security, or any part thereof...except by direction of  
7 some proper officer of the United States" commits a crime.

8 And finally, this provision from the United States  
9 Code in pertinent part:

10 "Whoever commits an offense against the United  
11 States or aids, abets, counsels, commands, induces or  
12 procures its commission" commits a crime.

13 "Whoever wilfully causes an act to be done  
14 which is directly performed by him or another would be an  
15 offense against the United States" commits a crime.

16 Now, with that background of the law, in a  
17 general way, let's apply the law to the conspiracy count,  
18 Count 1, which you remember is alleged against each one  
19 of the three on trial. Let me read it, let's read it  
20 together:

21 "The Grand Jury charges:

22 "1. From on or about the 1st day of January,  
23 1975, up to and including the date of the filing of this  
24 indictment, in the Southern District of New York and else-  
25 where, Angel Molina, a/k/a Ariquez, Manuel Adames, a/k/a



1 mcsr  
2 Pelao, Caesar Morales, Federico Ruiz, a/k/a Papito, Juan  
3 Mejia, a/k/a Guancho, Jorgita Rivera, John Doe, a/k/a  
4 Cristobal, John Doe, a/k/a Freddie, John Doe, a/k/a Neno,  
5 Jose Araujo, Ramon Ortega, a/k/a Ramoncita, Rafael Calzado,  
6 a/k/a Rafael Espinal, John Doe, a/k/a Chuleria, Felix  
7 Irrizarri, and Rafael Jacobo, the defendants, unlawfully,  
8 wilfully and knowingly did combine, conspire, confederate  
9 and agree together and with each other and with others  
10 known and unknown to the Grand Jury to commit offenses  
11 against the United States, to wit, to violate" a certain  
12 section of the law provided in the United States Code.

13 "2. It was a part of said conspiracy that the  
14 defendants Angel Molina" -- there is a repetition of all  
15 these names that I have already given you -- "and other  
16 co-conspirators would make a photograph and impression  
17 in the likeness of an obligation of the United States  
18 without direction of a proper officer of the United States,  
19 and would make plates, stones, and other things in the  
20 likeness of plates designated for the printing of obliga-  
21 tions of the United States, to wit, a quantity of printed  
22 plates and negatives bearing images of genuine obligations  
23 of the United States, including \$10, \$20 and \$50 Federal  
24 Reserve Notes.

25 "3. It was further a part of said conspiracy

1 that the defendants Angel Molina, a/k/a Ariques, Manuel  
2 Adames, a/k/a Pelao, Caesar Morales, Federico Ruiz, a/k/a  
3 Papito, Juan Mejia, a/k/a Guancho, Jorgita Rivera, John  
4 Doe, a/k/a Cristobal, John Doe, a/k/a Freddie, John Doe,  
5 a/k/a Neno, Jose Araujo, Ramon Ortega, a/k/a Ramoncita,  
6 and Rafael Calzado, a/k/a Rafael Espinal, John Doe, a/k/a  
7 Chuleria, Felix Irrizarri and Rafael Jacobo and other  
8 co-conspirators would, with intent to defraud, falsely  
9 make, forge and counterfeit obligations of the United  
10 States, to wit, counterfeit \$10, \$20 and \$50 Federal  
11 Reserve Notes.  
12

13 "4. It was further a part of said conspiracy  
14 that these defendants" -- naming them -- "and other  
15 co-conspirators would sell, exchange, transfer, receive  
16 and deliver false, forged and counterfeited obligations  
17 of the United States, to wit, the counterfeit \$10, \$20 and  
18 \$50 Federal Reserve Notes described in Paragraph 3 of this  
19 count with the intent that the same be passed, published  
20 and used as true and genuine."

21 The United States Code makes a conspiracy to  
22 commit a crime a separate offense, distinct and apart from  
23 the substantive crime or crimes the conspiracy was formed  
24 to accomplish.

25 Bear with me and I think I can drive it home.



The conspiracy charged is entirely separate and distinct from the charges made in the other five counts of the indictment which are commonly called the substantive counts. This fact, however, does not prevent you from considering proof of actual violations as evidence that a conspiracy existed.

To convict a defendant under this count, under the conspiracy count, you must find beyond a reasonable doubt each of the following elements:

First: That sometime between January 1, 1975 and September 25, 1975, which is the date that this indictment was filed, there was a conspiracy to violate the Federal counterfeiting laws.

The next element that must be proven beyond a reasonable doubt is that it was a part of that conspiracy to do any of the following:

[a]. Make a photograph and impression in the likeness of an obligation of the United States without direction by a proper officer of the United States, or make plates, stones and other things in the likeness of the plates designated for printing obligations of the United States, namely, Federal Reserve Notes; or -- you notice the emphasis I place on or, not and --

[b]. Falsely make, forge and counterfeit

obligations of the United States, namely, \$10, \$20 and \$50 Federal Reserve Notes, with intent to defraud; or

[c]. Sell, exchange, transfer, receive or deliver these falsely made, forged and counterfeited notes with the intent that they would be passed and used as true and genuine.

Now, you are not required to find that there was a conspiracy, to do all -- and I emphasize all -- of these things. This element is satisfied if you find beyond a reasonable doubt that there was a conspiracy either to make photographs, impressions or plates in the likeness of obligations of the United States, or to falsely make, forge and counterfeit obligations of the United States or to sell, exchange, transfer, receive or deliver them, with unlawful intent.

Again, I stress the word "or", because this phrase is in the disjunctive, and any one of these events is sufficient to satisfy the statute.

The third element that must be established beyond a reasonable doubt is as follows:

That the defendant you are considering wilfully joined in the conspiracy; and  
That at least one overt act was committed in furtherance of the conspiracy.



1  
2 Now, let me give you a crude example. Remember  
3 I said crude. It is a rough example of what we mean when  
4 we say conspiracy. A man, we'll call him "A", says to  
5 "B" who he knows, "I'm going to knock off that bank down  
6 the street," and "B" says, "What's wrong with me? How  
7 about counting me in?"

8 "A" says, "You want to?"

9 And "B" says, "Yes."

10 "Okay."

11 They shake hands. There you've got two. There  
12 must be at least two for a conspiracy. The objective is  
13 to knock off or to rob a bank. They both agree. They  
14 both understand, if it should be so found. You don't  
15 require any writing. You don't sit around a table and  
16 have a notary public take down the provisions of your  
17 understanding. What does it take for people to have a  
18 mutual understanding? Sometimes it is a nod of the head.  
19 Down in Wall Street there are thousands of transactions  
20 just by raising a hand indicating consent, approval,  
21 willingness. You go into the grocery store and buy milk  
22 and all you say is, "Milk," that is all, just one word,  
23 and you put some money on the table and you get something  
24 in exchange for your money. That is a contract. There  
25 is a meeting of minds between you and the grocer. You

1 want to buy and he wants to sell. That is as valid a  
2 contract as the most complicated contract between two  
3 giant corporations.  
4

5 You judge, whether there was consent by the  
6 circumstances. It is not only the number of words, it is  
7 behavior. Actions count louder than words very often,  
8 and you know that. And so in my crude ~~example~~ A expresses  
9 an intent or a plan that he has to rob a bank and B says  
10 he wants to participate in it and they both understand  
11 what the objective is. It is to rob a bank. They both  
12 agree, and if a third comes in and an eighth comes in and  
13 a 25th person comes in willingly, with intent to be a member  
14 of that plan, with a clear-cut determination of what the  
15 plan is, what the objective is, to wit, to rob a bank,  
16 then you've got two of the elements which the law demands  
17 in a conspiracy.

18 There is a third step which is absolutely  
19 imperative and that is that one of the conspirators takes  
20 a single step to carry out that objective. Let me give  
you another crude example of that. Suppose A and B, after  
"Well, what time are you going to

"I don't know what

"and out."



1                   B on his own, without telling A, makes a tele-  
2                   phone call to the bank: "What evening in the week are  
3                   you open?"

4                   Perfectly innocent telephone call on its face.  
5                   But that is a step taken to find out when the bank will be  
6                   open so that they can plan to rob it. That is a step  
7                   taken in connection with their plan. Even if A didn't  
8                   know that B made the telephone call, A is bound by it  
9                   nevertheless, and so you've got, first, that there was a  
10                  conspiracy. Two, that each member, each person was a  
11                  member of the conspiracy and fully aware of the objective  
12                  of the conspiracy and, three, that an overt step was taken  
13                  with regard to that conspiracy. If you are satisfied  
14                  beyond a reasonable doubt on each of those three, then the  
15                  law has been met.

16                  Does that common, crude example make sense to  
17                  you? Are you able to see something from it? Just bear  
18                  with me. When I get through with it you'll be ready to  
19                  answer questions, I'm sure, with regard to conspiracy and  
20                  what it means because you have to apply it to the facts  
21                  as you find them to be.

22                  Let's follow that up a bit. Suppose two or  
23                  more persons agreed among themselves to distribute nar-  
24                  cotics or to illegally transport alcohol or, as in the  
25

1 case before you, to counterfeit money and a single step  
2 is taken to further or advance the objective of the  
3 conspiracy, the crime of conspiracy has been committed.  
4 This is so even though the conspirators actually did not  
5 go so far as to actually distribute narcotics or transport  
6 the alcohol or counterfeit the money. It is still a  
7 conspiracy.  
8

9 So that in the crude example that I gave you,  
10 even though they didn't rob the bank actually the crime  
11 of conspiracy has been committed. If, in addition, they  
12 robbed a bank that is a substantive count. That is an  
13 additional charge. They have two criminal charges, one  
14 for conspiracy and the second for robbing the bank. You  
15 get it?

16 So here, one, conspiracy to counterfeit,  
17 manufacture and so forth, as I read it to you, and then  
18 the substantive counts for actually transferring it,  
19 selling it, et cetera, et cetera.

20 And so, if in addition to the conspiracy itself  
21 the conspirators proceed to execute the conspiratorial  
22 plan by actually robbing a bank or transporting alcohol  
23 or distributing those narcotics, whatever may have been  
24 the objective of the conspiracy, a separate crime is  
25 thereby committed and that separate crime is what we call



1 the substantive crime. So, one is the planning, which is  
2 a crime in and of itself and the other is a distinct  
3 additional crime, separate and apart, and that is the  
4 actual carrying out of the plan of the conspiracy. The  
5 law has in mind when you get together and start to conspire  
6 "Look out, we will make it a crime and do make it a crime  
7 when you conspire, even though the object of your conspiracy  
8 is not executed."  
9

10 The law, after all, deals with human beings,  
11 with human nature. The law is not an ass. The critics  
12 are the asses. They don't know what you are talking about  
13 most of the time. The law wisely figures that when you  
14 start to plan and you gang up one thing leads to another  
15 and then an illegal series of events ensue and it is much  
16 more difficult to handle a conspiracy than it is to handle  
17 a single offender, and so the law is sharp and firm. You  
18 get together to plan, to break a Federal law, you are  
19 committing a crime by getting together and planning it  
20 because we know that if you succeed you are going to have  
21 your ugly tentacles go deep into the earth and it will  
22 be years before the end of your series of misbehavior  
23 and misconduct and illegality is ended. That is the  
24 reason the law makes that kind of deportment a crime.

25 So, a conspiracy cannot exist without at least

1 two persons whereas, as you already understand, a separate  
2 crime to carry out the object of the conspiracy can be  
3 violated, of course, by only one person. Putting it even  
4 more simply: It is a crime to conspire or to plan to  
5 commit a crime and it is another crime if the plan is  
6 carried out. I have said that backwards and forwards and  
7 I shall continue to until my conscience makes me feel that  
8 I have driven it home.  
9

10 Hence, you have Count 1 which charges a con-  
11 spiracy and you have got the substantive counts 2, 3, 4,  
12 9 and 12, which are the acts that are alleged to have been  
13 committed by carrying out that conspiracy.

14 Because of its importance to the maintenance  
15 of law and order, an explanation of an unlawful conspiracy  
16 requires a word or two of background and I have pretty  
17 much given it to you already. Collective criminal  
18 agreement, that is, a partnership in crime, creates a  
19 greater potential threat to the public than the lone  
20 wrongdoer. Concerted action for criminal purposes often,  
21 if not normally, makes possible the attainment of ends  
22 more complex than those which an individual acting alone  
23 could accomplish. Group association increases the likeli-  
24 hood that the criminal objective will be successfully  
25 realized and renders detection more difficult than the



instance of a sole aggressor.

It was because of these and other reasons that Congress made a conspiracy or concerted action to violate a Federal law a crime entirely separate, distinct and different from the substantive law which may be the object of the conspiracy. These defendants are charged then with conspiracy, acting together and with others.

Now, let me give you the better language of the law on conspiracy. In essence, it is a crime to conspire to plan to violate a Federal law. I repeat, there is no need here to prove an actual violation of another Federal law. In other words, it is not necessary to show that the conspiracy succeeded. Two or more persons may agree to violate a Federal law and that alone constitutes, in essence, the crime of conspiracy. If they actually violate the law they conspired to do, that constitutes another and separate and distinct crime. In order to find the defendants guilty of the conspiracy count, the Government has the burden of proving beyond a reasonable doubt the four elements which I have already mentioned and it must prove every one of them, each one of these four elements, beyond a reasonable doubt.

I give them to you again:

First: That sometime between January 1, 1975

1 and September 25, 1975, which is the date that this indict-  
2 ment was filed, there was a conspiracy to violate the  
3 Federal counterfeiting laws;  
4

5 Second: And this must be proven also beyond  
6 a reasonable doubt, that it was part of this conspiracy  
7 to do any of the following:

8 [a]. Make a photograph or impression or like-  
9 ness of an obligation, and so forth.

10 [b]. Falsely make, forge, counterfeit and  
11 so forth.

12 [c]. Sell, exchange, transfer, receive or  
13 deliver these falsely made, forged and counterfeited  
14 notes, and so forth;

15 and the third element that must be proven beyond  
16 a reasonable doubt is that the defendant you are consider-  
17 ing wilfully and knowingly became a member of the con-  
18 spiracy;

19 and the fourth element that you must be satis-  
20 fied of beyond a reasonable doubt before you can convict:  
21 that at least one overt act was committed by one of the  
22 conspirators in furtherance of the conspiracy.

23 Says the law, a conspiracy is a combination or  
24 agreement of two or more persons by concerted actions  
25 to accomplish a criminal or unlawful purpose. The gist



1 of the crime is that unlawful agreement or combination  
2 to violate the law. A conspiracy is sometimes called a  
3 partnership in crime in which each member becomes the  
4 agent of every other member.  
5

6 To establish a conspiracy the Government is  
7 not required to show that two or more persons sat around,  
8 and so forth. I explained all of ~~that~~ already.

9 It is sufficient if two or ~~more~~ persons in any  
10 manner through any contrivance impliedly or tacitly come  
11 to a common understanding to violate the law.

12 In determining whether there has been an unlaw-  
13 ful agreement you may judge the acts or the conduct of  
14 the conspirators which are done in an apparent attempt to  
15 carry out a criminal purpose. The old adage that actions  
16 speak louder than words is certainly applicable here.  
17 Thus, dealing with the first element, which must be proven  
18 beyond a reasonable doubt, that is the existence of the  
19 alleged conspiracy, you are not to dismember it and view  
20 its separate parts. You are to look at it as a whole.  
21 Consider all the evidence from start to finish, all the  
22 evidence which has been admitted with respect to the  
23 conduct, the acts, the declarations of each of the alleged  
24 parties and such inferences as may reasonably be drawn  
25 from those circumstances.

1  
2 If on the basis of the sum total of such  
3 evidence and the reasonable inferences to be drawn from  
4 it, you are convinced that the minds of at least two  
5 alleged conspirators met in an understanding way, in an  
6 agreement to seek to achieve the unlawful purpose I have  
7 already pointed out to you, then this element of the offense  
8 is established.

9 In this connection it is not necessary for the  
10 Government to prove the success of the conspiracy in order  
11 to establish a violation of the conspiracy statute. I  
12 repeat: Persons may be guilty as parties to a conspiracy  
13 even though the objectives they undertook to achieve were  
14 never accomplished.

15 Usually the only evidence available is that  
16 of disconnected acts on the part of the alleged conspirator,  
17 which acts, however, when taken together in connection  
18 with each other show a conspiracy or an agreement to secure  
19 a particular result as satisfactorily and as conclusively  
20 as more direct proof.

21 If you find that the parties then got together  
22 to accomplish something unlawful, then a conspiracy is  
23 shown, even though you may find the individual conspirators  
24 may have done acts in furtherance of the common, unlawful  
25 design apart from and unknown from the others, so long



1 as those acts were done to carry out the same objective  
2 of the conspiracy. Get that? Not everyone does the same  
3 job. When you get dinner ready for people, someone is  
4 in the kitchen doing the cooking, someone is laying the  
5 table or setting the table. It is all for a common  
6 objective. Certainly the burden on the cook is greater  
7 than on the person putting some utensils on the table.  
8

9 And so, plainly speaking, whether you are an  
10 errand boy or the captain, if there is a conspiracy and  
11 you are a member of it, whether you are the big shot or the  
12 errand boy, if each is a willing member of that conspiracy,  
13 whatever it may be, each is a conspirator in the eyes of  
14 the law.

15 It is impractical to think of a conspiracy  
16 without the so-called big fellows and the first lieutenants  
17 and the little guys who do the running around, the deliver-  
18 ing, the sweeping up. And so it is natural that the  
19 big shot doesn't tell everybody what his plans are, what  
20 he is doing and what each of the conspirators is doing.  
21 So long as they are doing what they do to carry out the  
22 objective of the conspiracy, what is done by each conspira-  
23 tor is binding on each and every conspirator, whether  
24 done with his knowledge or not, because each is the agent  
25 of the other in carrying out the common purpose.

1  
2 And so, that is the law, and when anybody  
3 undertakes to be a conspirator, that is what he is stuck  
4 with, to use the vernacular. Of course, regardless of  
5 what his participation may be, and by that I mean whether  
6 what he did was to furnish the brainpower of the conspiracy  
7 or to use muscle or to do some menial task, you must be  
8 satisfied that there was a conspiracy and satisfied beyond  
9 a reasonable doubt that the top man, so to speak, or the  
10 little man at the end of the totem pole, so to speak, each  
11 was a willing and knowing member of the conspiracy, each  
12 with the intent to have the conspiracy go on and succeed.

13 Under the law, a conspiracy once formed is  
14 assumed to have continued until its object has been  
15 accomplished or it has been abandoned by all of its members  
16 or it has been frustrated, as by arrest or unless there is  
17 affirmative proof offered of withdrawal or disassociation.

18 In determining whether the charge of the  
19 conspiracy has been made out in this case, it is your task  
20 and your task alone on this first element of conspiracy  
21 to judge the total picture of the asserted acts and conduct  
22 of the alleged conspirators which are claimed to have  
23 occurred for the purpose of determining and promoting the  
24 criminal agreement and seeking the alleged criminal  
25 objective.



1  
2 Like many or most of the things in the law,  
3 a conspiracy is not required to be established by so-called  
4 direct evidence. The unlawful agreement or understanding  
5 which, as I have said, is the heart of the matter, may  
6 be found, if it is found at all, as a matter of inference  
7 from the conduct of the people alleged to have comprised  
8 or participated in the conspiracy.

9 And so, ladies and gentlemen of the jury,  
10 if you conclude that the conspiracy as charged existed,  
11 you must be sure that you decide whether the defendant  
12 you are considering -- and this applies to each defendant  
13 -- was a member of that conspiracy. That element, too,  
14 as I have pointed out so many times, must be established  
15 beyond a reasonable doubt as I have defined reasonable  
16 doubt for you.

17 In short, whether or not a defendant was a  
18 member of the conspiracy may be determined upon the  
19 reasonable inferences to be drawn from all the evidence in  
20 the case, including the evidence that you heard as to his  
21 own actions, his own conduct, his own connection with the  
22 acts and conduct of the other alleged co-conspirators.  
23 Putting it more succinctly, the Government must prove that  
24 the defendant knowingly and wilfully joined the conspiracy  
25 during the period of its operation with the intent and

purpose of furthering its objectives.

I want to caution you that mere association with one or more conspirators does not make one a member of a conspiracy. Mere presence at the scene of a crime and knowledge that a crime is being committed are not sufficient without more to establish that a defendant was a participant in the conspiracy or aided and abetted the crime. Likewise, mere presence and conspiratorial discussions and knowledge of the existence of the conspiracy are not sufficient by themselves and without more to establish that a defendant was a member of the conspiracy.

A person might very well know what is going on and sit in and so forth without being an active participant or having consented or agreed in any way by actions or otherwise to being a member. That would not make him a member. He would be the equivalent of a spectator. But if his behavior and all the circumstances and the facts connected with his behavior, his presence, and what he did and what was said, all of those things you add up to decide whether or not he was merely a spectator or actually a member. Of course, you must be satisfied that he was a member by evidence beyond a reasonable doubt.

Am I getting through? I hope no one is going to say, "What do you think, Judge, we're dummies?" Of



1 course not. Even lawyers have great difficulty understand-  
2 ing conspiracy. That is the main, the heaviest part of the  
3 Court's charge. I've got to make it clear so that you  
4 won't have a moment's trouble with it.  
5

6 Suppose we take a few minutes' recess.

7 [Recess.]

8 THE COURT: And so, to ~~continue~~, what you must  
9 keep uppermost in your mind as you ~~determine~~ whether the  
10 defendant whom you are considering was ~~actually~~ a member  
11 of the conspiracy, you must focus ~~upon~~ the defendant's  
12 relationship to the crime and not ~~solely~~ upon his relation-  
13 ship with others accused of committing the crime. His  
14 relationship to the crime must be sufficiently substantial  
15 to satisfy the concept of the personal guilt.

16 What is necessary is that the defendant par-  
17 ticipate with knowledge of at least some of the purposes  
18 of the conspiracy and with intent to aid in the accomplish-  
19 ment of those unlawful ends. I repeat, that does not  
20 necessarily mean that he has to do what we call  
21 spade work. He can get on the telephone, make a couple  
22 of calls and he is as much a member of the conspiracy as  
23 the fellow who was doing something every other minute in  
24 connection with the furtherance of the conspiracy, so  
25 long as the defendant in making that telephone call or

1  
2 whatever other simple thing he may have done, was actually  
3 a member, a knowing, a willing member of the conspiracy.

4 A defendant may not know all of the conspirators,  
5 yet if he knows there is a conspiracy, he knows its  
6 objective in the main, if he has a knowledge of its basic  
7 common objective and aims and joins it, then he adopts  
8 as his own the past and future words ~~and~~ acts of all the  
9 other conspirators in furtherance of ~~the~~ conspiracy, as  
10 he understands it, even though he may not have been present  
11 when the words were said or the acts were done.

12 Yes, indeed, if he becomes a member of the  
13 conspiracy he is even bound by the acts performed by  
14 conspirators who carried out the objective of that con-  
15 spiracy before he became a member, so long as what they  
16 did was to carry out the objective of the conspiracy,  
17 just as when he became a member he did something to carry  
18 out the objective of the conspiracy. Each one is the  
19 agent of the other.

20 And so a person becomes a member of a conspiracy  
21 by associating himself, however informally, with the common  
22 plan or scheme knowing the central aim or principal purpose  
23 of the overall plan or scheme and intending to aid in  
24 some way, even in a more minor way, to bring about the  
25 success of the plan or scheme, and hence, it comes about,



1 as I told you, that you have the captains and lieutenants  
2 and the fellows on the lowest rung on the ladder.  
3

4 I have been repetitious. I don't want to hear  
5 myself talk. It is my job to instruct, and that is my  
6 way of instructing you. I do it with lawyers. I do it  
7 with the members of my own family. I do it with friends  
8 when we are talking about something that counts, and  
9 justice counts. The basic question is what was the scope  
10 of and the nature of the agreement as the defendant saw  
11 it, what persons and what kinds of activities did he have  
12 good reason to believe were involved in furtherance of  
13 the aim of the conspiracy? Knowledge is a matter of  
14 inference from the facts proved. It is not necessary that  
15 the defendant be fully informed as to the details of the  
16 scope of the conspiracy in order to justify an inference  
17 of knowledge on his part. To have guilty knowledge a  
18 defendant need not know the full extent of the conspiracy  
19 and all of its activities and actors. However, there is  
20 need to find and find beyond a reasonable doubt that a  
21 defendant charged with the conspiracy had knowledge of the  
22 general illicit purpose of violating a Federal law.

23 Accordingly, to find a defendant before you  
24 guilty under the conspiracy count you must find that he  
25 entered into the conspiracy with a specific criminal

1 intent and knowledge. The only way you have of answering  
2 or arriving at the state of mind of a defendant in the  
3 case before you is to take into consideration all the  
4 facts, all the circumstances, shown by the total proof.  
5

6 Direct proof here with regard to wilful or  
7 wrongful intent or knowledge is not necessary. That may  
8 be inferred, I repeat, from acts or a combination of acts.  
9 These are questions of fact and that is where you come in,  
10 and you alone, to be determined from all the circumstances  
11 and determined by you.

12 Remember, in a conspiracy it is common that some  
13 of the conspirators may play major roles while others play  
14 minor roles. Using the partnership analogy again, by  
15 becoming a partner he assumes all the liabilities of the  
16 partnership, including those that occurred before he  
17 became a member. It is not required that a conspirator  
18 know all the members of the conspiracy. A conspiracy  
19 and a defendant's participation therein may be inferred  
20 from such facts and circumstances in evidence as logically  
21 tend to sustain that inference.

22 The independent evidence of illicit association  
23 in a conspiracy may be totally circumstantial. To find  
24 any defendant guilty of a conspiracy you must find he  
25 knowingly and intentionally participated therein.



1                   mcsr  
2                   This means that a party acted deliberately and  
3 with knowledge and purposely participated therein intending  
4 to violate the law rather than through inadvertence,  
5 mistake or negligence.

6                   In determining whether or not a defendant was  
7 a party to or a member of such a common plan the jury are  
8 not to consider what others may have said or done. That  
9 is to say, the membership of the defendant or any other  
10 person in such a common plan must be established by evidence  
11 as to his own conduct -- that is, what he himself knowingly  
12 said or did.

13                   If and when it appears from the evidence,  
14 direct or circumstantial, in the case that such a common  
15 plan did exist and the defendant was one of the members  
16 of the plan, then, I repeat, the acts and statements by  
17 any person likewise found to be a member may be considered  
18 by the jury as evidence in the case as to the defendant  
19 found to have been a member, even though the acts and  
20 the statements may have occurred in the absence and without  
21 the knowledge of the defendant, provided such acts and  
22 statements were knowingly done and made during the  
23 continuance of the common plan or conspiracy and in  
24 furtherance of some intended object or purpose of the plan.

25                   Put otherwise, any statement or admission made

1 mesr

2 or act done by one person, outside of court, may not be  
3 considered as evidence against any person who was not  
4 present and did not see the act done, or hear the statement  
5 made.

6 So, to sum it up, the Government must establish  
7 beyond a reasonable doubt that a defendant, aware of its  
8 purposes and objects, entered into ~~the~~ conspiracy with a  
9 specific criminal intent, that is, a defendant knowingly  
10 did an act which the law forbids, purposely intending to  
11 violate the law.

12 Should you find beyond a reasonable doubt that  
13 a conspiracy existed and that based upon proof of his  
14 actual participation therein a defendant was a member,  
15 then the acts -- I repeat -- then the acts and declarations  
16 of any other person you may find was also a member of the  
17 conspiracy made during its pendency and in furtherance of  
18 its objectives are considered the acts of all of the  
19 current members, even though they are not present.

10 20 This is so because when persons enter into a conspiracy  
21 to accomplish an unlawful end, they become responsible  
22 for one another in carrying out the conspiracy and  
23 thereafter the acts and declarations of others who we  
24 find to be members of that same conspiracy may be con-  
25 sidered as against the defendant if you find the defendant



1 to be a member of the conspiracy when those acts or  
2 declarations occurred, and if those acts are done and  
3 declarations made in furtherance of that very same con-  
4 spiracy.  
5

6 Now, that covers two of the three elements,  
7 each of which must be proved beyond a reasonable doubt to  
8 sustain the charge of conspiracy.

9 Now we come to what we call the overt acts.  
10 You remember I gave you a crude example with regard to  
11 robbing a bank: A and B agree and planned to do that and  
12 then B makes a telephone call to find out when the bank  
13 is open in the evening, and I told you that was taking a  
14 step to carry out the conspiracy. It is a definite step  
15 that was taken, innocent on its face but nevertheless a  
16 step that was taken in connection with the plan. That  
17 the overt act was done by one of the conspirators must  
18 be proven beyond a reasonable doubt.

19 The offense of conspiracy is complete, then,  
20 only when the unlawful agreement is made and any similar  
21 overt act to effect the objects of the conspiracy is  
22 thereafter committed by at least one of the conspirators.

23 What is this overt act? I have already indicated  
24 to you, it is any step or action or conduct, even innocent  
25 on its face, like a telephone call, which is taken to

1 achieve, accomplish or further the objective of the  
2 conspiracy.  
3

4 Why does the law say you have got to prove an overt  
5 step was taken, some act? Well, there again, the law  
6 shows its understanding of human behavior. The idea is  
7 that if a step isn't taken, then they undoubtedly abandoned  
8 their plan and the law will not hold them accountable.  
9 But if they go ahead and take the step, that shows they  
10 were fully determined to go ahead with the plan and they  
11 didn't abandon it, because, look, that step was taken  
12 by one of them in order to further the objectives of the  
13 conspiracy, and that is what the purpose of that step was.  
14 That is what makes it imperative.

15 The overt act need be neither a criminal act  
16 nor the very crime which is the object of the conspiracy.  
17 It needn't be committed by the particular defendant under  
18 consideration.

19 Let me give examples of overt acts. They are  
20 all set forth in the indictment:

21 That certain defendants, naming them, delivered  
22 quantities of money to Molina and other persons to finance  
23 the manufacturing of counterfeit Federal Reserve Notes.

24 Another one:

25 "In or about March of 1975 the defendant Araujo



provided an apartment at 611 West 156th Street, New York, New York."

Perfectly innocent on its face, providing an apartment, but that is an overt act and it is set forth. The Government doesn't have to set forth every act. It sets forth at least one overt act that was committed to show that the Government contends that the conspiracy was full blown and not abandoned.

You'll take a copy of the indictment with you. Your only concern with the indictment is as it relates to the three on trial and you don't have to be bothered with all the rest. You'll have it and you'll see all the overt acts that are listed.

I repeat, parties may conspire and agree to do an unlawful thing and they may change their mind and not go through with it and drop it and pull out of it right away, so the law says, when you do an overt act, however, in furtherance of it, that shows you were in it, you had not abandoned it, you undertook to fulfill its objective.

The prosecution, under our law, is not required to set forth in the indictment each and every act on which it relies to establish the conspiracy or the defendants' participation therein, nor is it required to prove each overt act which may have occurred during the furtherance

1 of the conspiracy. It is required to prove at least one  
2 such act did take place. The overt act or step essential  
3 to sustain a conspiracy need not implicate all the  
4 conspirators nor is it required that each of the conspirators  
5 participate in or commit that particular overt act. It is  
6 sufficient that such overt act was performed by any one  
7 or some of the conspirators. This is so since the act of  
8 one conspirator, as I have already pointed out, done in  
9 furtherance of the conspiracy, becomes the act of all the  
10 conspirators.  
11

12 The guilt of a conspirator is not measured by  
13 the extent or the duration of his participation in the  
14 conspiracy nor is it necessary that he receive a pecuniary  
15 benefit for his participation. That is the law. If the  
16 defendant participated in the conspiracy to a more limited  
17 degree than others or if he received less benefit than  
18 others, he is equally culpable so long as he was in fact  
19 a conspirator.

20 As alleged in the indictment, the conspiracy  
21 commenced on or about January 1, 1975 and continued until  
22 September 25, 1975. It is the law that the Government need  
23 not prove that the conspiracy existed over the whole course  
24 of the time that is alleged in the indictment. The  
25 duration of the conspiracy may be very short, it may be



1  
2 very long, it may last even for many years or during parts  
3 of each year.

4       The indictment in this case, remember, says  
5 that the conspiracy began about January 1, 1975. Speaking  
6 generally, the Government has no knowledge of the exact  
7 time or place of the formation of the conspiracy.  
8 Accordingly, in your assessment of the evidence relating  
9 to conspiracy you may consider acts and declarations by  
10 alleged co-conspirators which preceded January 1, 1975  
11 if those acts relate to the alleged conspiracy and were  
12 in furtherance of the conspiracy. You may say, "Why  
13 was that evidence brought in? It is before the alleged  
14 commencement of the conspiracy before us."

15       And the answer is it is not to show another  
16 conspiracy. It is to explain the particular conspiracy  
17 before you, and that therefore you may consider that  
18 evidence in order to understand the conspiracy before you.  
19 Do I make that clear? Does anybody have any doubt about  
20 that?

21       You must bear in mind that once formed a  
22 particular conspiracy must retain throughout its existence  
23 the same basic agreement and the same objective present  
24 as when the conspiracy started. It must be the same  
25 conspiracy, not some other conspiracy. If you do not find

1 such a single overall conspiracy the Government will have  
2 failed to establish the single overall conspiracy as  
3 charged in Count 1. If you find that within that period  
4 all the elements of this crime have been demonstrated  
5 to your satisfaction beyond a reasonable doubt, then that  
6 crime becomes complete.  
7

8 If you find that there was more than one  
9 conspiracy, throw out the whole case. That is the end  
10 of it. You must find from the facts that single conspiracy.  
11 That was its object. These steps were taken in connection  
12 with that objective. That was the conspiracy we are  
13 talking about, not some other conspiracy.

11 14 Some of the defendants have contended that the  
15 Government's proof fails to show the existence of one  
16 overall conspiracy which this indictment charges. They  
17 argue that no conspiracy existed or if in fact one did  
18 exist, then at best the evidence shows several separate  
19 and independent conspiracies involving various groups of  
20 the defendants.

21 Proof of several separate conspiracies is not  
22 proof of the single overall conspiracy charged in the  
23 indictment unless one of the several conspiracies proved  
24 is the single conspiracy which the indictment charges.  
25 So, what you must first do is determine whether the



1 conspiracy charged in the indictment existed between two  
2 or more conspirators. If you find no such conspiracy  
3 existed, then you acquit. However, if you are satisfied  
4 that such a conspiracy existed you must determine who the  
5 members were of that particular conspiracy. If you find  
6 that a particular defendant is a member of another  
7 conspiracy, not the one charged in the indictment, you  
8 must acquit that defendant.  
9

10 In other words, to find a defendant guilty you  
11 must find that he was a member of the conspiracy charged  
12 in the indictment and not some other conspiracy.

13 In determining whether a given conspiracy  
14 exists, you may consider what the evidence shows as to  
15 changes of personnel and activity. You may find a single  
16 conspiracy, even though there were changes in personnel  
17 or activities, provided you find that some of the con-  
18 spirators continued throughout the life of the conspiracy  
19 and that the purpose of the conspiracy continued to be  
20 those charged in the indictment.

21 The fact that the parties are not always iden-  
22 tical does not mean that there are separate conspiracies.  
23 In other words, if at all times the alleged conspiracy had  
24 the same overall primary purpose and the same nucleus  
25 of participants, the conspiracy would be the same basic

1 mcsr

2 scheme even though in the course of its operation additional  
3 conspirators joined in and performed additional functions  
4 to carry out the scheme while others were not active or  
5 had terminated their relationship.

6 If you decide that the conspiracy charged in  
7 the indictment existed between any of the defendants,  
8 you must then decide as to each defendant individually  
9 whether he joined the conspiracy with knowledge of its  
10 purposes.

11 In determining whether any defendant was a party,  
12 each is entitled to individual consideration of the proof  
13 respecting him, including any evidence of his knowledge  
14 or lack of knowledge, his status as a partner, manager,  
15 supervisor or whatever, his participation in important  
16 conversations, his participation in the plan, scheme or  
17 agreements alleged.

18 I instruct you that a Federal Reserve Note,  
19 of whatever denomination, is an obligation and security of  
20 the United States.

21 I instruct you that Manhattan and the Bronx are  
22 in the Southern District of New York.

23 Now, let us proceed to Count 2 of the indictment  
24 as alleged against each of the three defendants on trial.  
25 Here is how it reads:



"The Grand Jury further charges:

"In or about April, 1975, in the Southern District of New York, Angel Molina, a/k/a Ariques, Manuel Adames, a/k/a Pelao, Caesar Morales, Federico Ruiz, a/k/a Papito, Juan Mejia, a/k/a Guancho, Jorgita Rivera, John Doe, a/k/a Cristobal, John Doe, a/k/a Freddie, John Doe, a/k/a Neno, Jose Araujo, Raymond Ortega, a/k/a Ramoncita, and Rafael Calzado, a/k/a Rafael Espinal, the defendants, unlawfully, wilfully and knowingly did make a photograph and impression in the likeness of an obligation of the United States without direction by a proper officer of the United States, and did make a plate, stone and other thing in the likeness of a plate designated for the printing of an obligation of the United States, to wit, a quantity of printed plates and negatives bearing images of genuine obligations of the United States, including \$10, \$20 and \$50 Federal Reserve Notes."

Now, I told you what had to be proven, each one of the four elements, to establish conspiracy and each has to be proven beyond a reasonable doubt. Now I have got to tell you what the law demands must be proven as to the elements that go to Count 2 and each must be proven, likewise, beyond a reasonable doubt. What are they?

"First: That in or about April 1975 in the Southern District of New York, the defendant wilfully did make a photograph or impression in the likeness of a genuine \$10, \$20 or \$50 Federal Reserve Note; or

"Did wilfully make a plate, stone or other thing in the likeness of a plate designated for the printing of genuine Federal Reserve Notes;

"Second: That the defendant knew the photographs, impressions, plates, stones or other things were in the likeness of genuine Federal Reserve Notes, or plates designated for the printing of genuine Federal Reserve Notes."

Now, the first element: The words "made", "photographed" and "impression" have their common ordinary meaning. A "plate" or "stone" is a flat surface or material used for printing; "other things" means something similar to such an object.

The term "likeness of" means something that is similar to or resembles or is made to look like something else.

In order to convict the defendants named in Count 2 you must find beyond a reasonable doubt that they knew the objects being made were in the likeness of genuine Federal Reserve Notes or plates.



"Knowingly" simply means with knowledge. The defendants knowingly made photographs, impressions, plates, stones or other things in the likeness of genuine notes and plates if they knew that they were in the "likeness of" at the time when they were made.

Now we come to Count 3 of the indictment. It, likewise, is alleged against each defendant.

Count 3 reads:

"The Grand Jury further charges:

"In or about April, 1975, in the Southern District of New York, Angel Molina, a/k/a Ariques, Manuel Adames, a/k/a Pelao, Caesar Morales, Federico Ruiz, a/k/a Papito, Juan Mejia, a/k/a Guancho, Jorgita Rivera, John Doe, a/k/a Cristobal, John Doe, a/k/a Freddie, John Doe, a/k/a Neno, Jose Araujo, Raymond Ortega, a/k/a Ramoncita and Rafael Calzado, a/k/a Rafael Espinal, the defendants, unlawfully, wilfully and knowingly, with intent to defraud, did make, forge and counterfeit obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$3,000."

What does the law demand must be proven with regard to Count 3? Three elements must be proven, each beyond a reasonable doubt.

First: That in or about April 1975 in the

Southern District of New York, the defendant did wilfully make, forge and counterfeit approximately \$3,000,000 in \$10, \$20 and \$50 Federal Reserve Notes."

I'm sorry. I said \$3,000 before when I read you the words of Count 3. I'm rushing, I'm afraid. I meant to say \$3,000,000. Let me repeat that:

"The defendants, unlawfully, wilfully and knowingly, with intent to defraud, did make, forge and counterfeit obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$3,000,000."

Now, you must find beyond a reasonable doubt that in or about April of 1975 in the Southern District of New York the defendants you are considering did wilfully make, forge and counterfeit approximately \$3,000,000 in \$10, \$20 and \$50 Federal Reserve Notes;

Second: That the defendant knew the notes were forged and counterfeit, and;

Third, that the defendant acted with intent to defraud.

In order to convict the defendants named in Count 3 you must find beyond a reasonable doubt that they knew the Notes were counterfeit.

The word "knowingly" simply means, with knowledge.



The defendants knowingly made the counterfeit bills if they knew that they were counterfeit at the time when they made them.

Now, that doesn't mean physically handled it yourself. When you operate a camera you don't have ten people operate it. It takes one person to operate it, but if you know what is going on and you are a part of it, the fact that you don't operate the camera doesn't make you less guilty.

Now, I have told you that to convict a defendant named in Count 3 you must find beyond a reasonable doubt that he made the Notes with a specific state of mind, namely, an "intent to defraud." And what does that phrase mean? It means an intent that at sometime in the future some one or more members of the public would be defrauded by any of the bills.

It is not necessary that the defendants have had any particular persons in mind as the persons who would be defrauded. The Government does not have to prove that any of the defendants have actually caused anybody to suffer a pecuniary loss from having accepted one of the notes in the mistaken belief that it was genuine.

Now we come to Count 4. That, too, you remember, is against each of these three defendants. What about it?

It is also alleged in the indictment. Here is how it reads:

"The Grand Jury further charges:

"In or about April , 1975, in the Southern District of New York, Angel Molina, a/k/a Ariques, Manuel Adames, a/k/a Pelao, Caesar Morales, Federico Ruiz, a/k/a Papito, Juan Mejia, a/k/a Guanche, Jorgita Rivera, John Doe, a/k/a Cristobal, John Doe, a/k/a Freddie, John Doe, a/k/a Neno, Jose Araujo, Ramon Ortega, a/k/a Ramoncita, and Rafael Calzado, a/k/a Rafael Espinal, the defendants, unlawfully, wilfully and knowingly, did sell, exchange, transfer, receive and deliver false, forged and counterfeited obligations of the United States, to wit, counterfeit \$10, \$20 and \$50 Federal Reserve Notes in the approximate amount of \$3,000,000 with the intent that the same be passed, published and used as true and genuine."

What are the elements with regard to Count 4, each of which must be proved beyond a reasonable doubt?

First: That in or about April of 1975, in the Southern District of New York, the defendant did wilfully, sell, exchange, transfer, receive or deliver approximately \$3,000,000 in \$10, \$20 and \$50 Federal Reserve Notes. I want to stress that it is sufficient for the Government



to prove beyond a reasonable doubt that defendant did either sell, exchange, transfer, receive or deliver.

It need only prove one of those acts;

Second: That the notes were counterfeit;

Third: That the defendant knew the Notes were counterfeit; and

Fourth: That the defendant intended that the Notes would be passed, published or used as true and genuine.

You see the common element that runs through so many of these counts: Knowledge, intent, knowledge that they were counterfeit, to pass the counterfeit as though it was genuine money, to do some act such as I have described.

Now, I have already instructed what knowledge means with respect to Count 3. It means the same thing here concerning Count 3 and I will not repeat that instruction.

I have also instructed on the words intent to defraud when I discussed Count 3. I now instruct you that an intent that the Notes would be passed, published, or used as true and genuine means the same thing. It means an intent that at some time in the future some one or more members of the public would be given one or more of

1  
2 these counterfeit Notes as payment for something, or would  
3 be told that these Notes were true and genuine, or would  
4 deal with the Notes in some other way under the mistaken  
5 assumption that they were true and genuine, without  
6 knowing that they were true and genuine, without knowing  
7 that they were counterfeit. It is not necessary that  
8 the defendants have had any particular person in mind as  
9 the persons to whom the Notes would be passed as true and  
10 genuine. Nor is it necessary that the Notes ever have  
11 been actually passed or used as true and genuine. The  
12 Government does not have to prove the defendant ever  
13 actually caused any person to suffer any pecuniary loss  
14 from having accepted one of the Notes in the mistaken  
15 belief that it was genuine.

16 And, of course, the Government is not defeated  
17 because it didn't produce \$3,000,000 in counterfeit.  
18 You understand that even the production of one counterfeit  
19 note, provided all of the elements that I described are  
20 satisfactorily spelled out beyond a reasonable doubt, is  
21 as much a violation of the law as a great number.

22 Now, before I conclude this portion of the  
23 charge, there is one other statute that I must discuss  
24 with you.

25 It is not necessary for the Government to show



mcsr

1  
2 that the defendant you are considering physically committed  
3 the crime himself. Get that. See the common example:  
4 A group commits a robbery. They take a diamond. There  
5 are ten who do the job. One has the diamond. Does that  
6 mean that only he can be held accountable under the law?  
7 Of course not. That is stupid. It is not a grand  
8 piano that each one of the ten had to help move out, it is  
9 a little diamond. They all did the same thing to  
10 effectuate that end. Each is said to possess that diamond  
11 even though physically it is held by one.

12 And so the doing of acts here is only to be  
13 considered by you really to determine whether or not the  
14 person was a member. The quality of the act committed,  
15 how vital it was, has very little to do with it, but did  
16 the act itself, no matter what it was, indicate member-  
17 ship and, with the other facts and circumstances, did it  
18 spell out membership beyond a reasonable doubt?

19 But look at what this aiding and abetting  
20 statute says: It is also a crime not only to commit  
21 the illegal acts to which I have referred, but to aid or  
22 abet or procure or induce another person to commit such  
23 acts.

24 The law says: "Whoever commits an offense  
25 against the United States or aids, abets, counsels,

1 commands, induces or procures its commission, is punishable  
2 as a principal."

7 13 4 That means that each is held accountable, the  
5 one who does it and the one who aids him in doing it.  
6 This statute, therefore, provides that a person who aids  
7 and abets another to commit an offense is just as guilty  
8 of that offense as if he committed it himself.

9 Accordingly, you may find a defendant guilty  
10 of the offense charged in Counts 2, 3 and 4 of this indict-  
11 ment if you find beyond a reasonable doubt that another  
12 person committed the offense charged in those counts  
13 and that the defendant you are considering aided and  
14 abetted that person in effectuating it.

15 Have I made it clear, Mr. Foreman?

16 THE FOREMAN: Yes, sir.

17 THE COURT: Have I made it clear to all you  
18 ladies and gentlemen of the jury?

19 In determining whether a defendant aided and  
20 abetted the commission of the offense you should ask  
21 yourselves these questions:

22 Did he associate himself with the venture?  
23 Did he participate in it as something he wished to bring  
24 about? Did he seek by his actions to make it succeed?  
25 If he did, then he is an aider and abettor.



Of course, to find the defendant guilty of aiding and abetting you must find something more than mere knowledge on his part that a crime was being committed, for a mere spectator at a crime is not a participant, I repeat. But, in order to convict, it is not necessary that you find that a defendant himself did all of the criminal acts, since participation in the crime can be found if you find that he aided and abetted -- that he assisted -- another in committing it.

After all, it is not uncommon that in any combination of persons to achieve a common goal, legal or illegal, each person has a different -- not a duplicating job -- to do in going about the attainment of the common purpose.

Ladies and gentlemen, you know as well as I do that in many a business enterprise a person is brought in as a partner just for window dressing. The fact that he is there will bring the customers in. Does that make him less a partner because he goes around all dolled up, looks handsome, or whatever that is supposed to mean. Just shows off. Does that make him less a partner than the one who is really sweating it out during the day and has to sell a bill of goods to all and sundry? Of course not. And likewise, with an illegal enterprise. The

1 very presence of a person may mean something to other  
2 conspirators. He is a big shot. Everybody knows what he  
3 stands for.  
4

5 "Hey, that is some guy to have."

6 Well, if that guy, so to speak, is a willing  
7 member of the conspiracy and he lends himself in that  
8 fashion he is as much a member of the conspiracy as those  
9 who are running around every minute of the day doing some-  
10 thing to perpetuate or further the objectives of the  
11 conspiracy.

12 So the law provides that anyone who knowingly  
13 aids or abets another in any manner in the commission of  
14 a crime is equally guilty of the commission of that crime  
15 and is himself a principal and may be charged directly  
16 with the commission of a crime as a principal and convicted  
17 upon such charge, although the evidence indicates that he  
18 only aided and abetted in the commission of the crime and  
19 did not have a major part in the undertaking.

20 He aids and abets if knowing a crime is being  
21 committed what he does helps make possible or cause the  
22 commission of the crime.

23 I have reviewed with you the elements of the  
24 substantive counts 2, 3 and 4 which the Government must  
25 prove beyond a reasonable doubt before the defendants can



be found to be guilty. There is, furthermore, another method by which you should evaluate the possible guilt of a defendant on Counts 2, 3 and 4 which would sustain his guilt on that count, even though the Government's proof were not sufficient to establish all the required elements as to him.

Follow this carefully. I have already instructed you as to the crime of conspiracy for which the defendants are charged in the first count. Now, if you find pursuant to those instructions that a defendant named in Counts 2, 3 and 4 was a conspirator and hence guilty under the first count, you may find him guilty as well under Counts 2, 3 and 4, providing you find as to each of those counts the following, and you must find it beyond a reasonable doubt:

First: That the crime charged in the particular count was committed;

Second: That it was committed during and in furtherance of the conspiracy charged in the first count; and,

Third: That the defendant might reasonably have foreseen the acts constituting the offense of Counts 2, 3 and 4. If you find all three to be facts, then each and every member of the conspiracy, just like a partner,

1 is criminally responsible for the substantive crime and  
2 may be found guilty thereof. The reason for this is that  
3 a co-conspirator committing a substantive crime would in  
4 that case be an agent of the other members of the conspiracy.  
5

6 For example, if you find beyond a reasonable  
7 doubt that one defendant committed a substantive offense  
8 specified in Count 2 or 3 or 4, and if you find that he  
9 and other defendants were members of the conspiracy, and  
10 if you find that the acts which constituted the offense  
11 in Counts 2, 3 and 4 were done in furtherance of the  
12 conspiracy of which those defendants were members and  
13 that those defendants would have reasonably foreseen such  
14 acts, then you may find that each of those defendants  
15 is guilty of the offense alleged in Counts 2, 3 or 4,  
16 even though he did not personally commit the substantive  
17 crime.

18 Short but right to the point, I hope. Do you  
19 get it, Mr. Foreman?

20 THE FOREMAN: Yes, sir.

21 THE COURT: All of you?

22 JUROR NO. 9: I'm not really sure of the  
23 aiding and abetting part of it. I'm wondering if I can  
24 give you an example, staying away from the case, that  
25 could possibly help.



THE COURT: Surely.

JUROR NO. 9: Let's say it is a narcotics case and someone is riding in a car and he knows they are involved in narcotics' activities. Would he be responsible for -- would he be guilty of the charge of, let's say, manufacturing narcotics if he is aware that it was being done and that his only activity was to be the driver in the criminal --

THE COURT: Generally speaking, because I haven't gone into the extent of the evidence such as was presented over two weeks here and just sort of summarized it, but I think I can get the general import of your question and I'm glad you didn't hesitate to ask it. I invited it and you responded.

If the driver of the car knew that narcotics were going to be peddled and that he was taking the narcotic operators in his car from Point A to Point B in order that they should be able to carry out their objective, it might very well be said to that extent he aided and abetted them because he knew what their objective was. He allowed his services to be at their command in order to facilitate or help them go from one point to another. However, that evidence may also show to the fact finders that they are not satisfied beyond a reasonable doubt that he did more

1 than be a sort of a fool who just obligingly did something:  
2 Okay, fellows, I've got nothing to do with it, but I'll  
3 be glad to take you from Point A to Point B.  
4

14 5 You've got to show activity, that he was active  
6 in it. In aiding and abetting you've got to show something  
7 more than being a mere spectator. The example you gave  
8 is some evidence of aiding and abetting. Whether or not  
9 it would be sufficient to show what the law means by  
10 aiding and abetting would depend on full disclosure of  
11 the total evidence. Do you understand?

12 The question that I was asking is whether or  
13 not all of you got the last point. Your question dealt with  
14 aiding and abetting. My question to you was: Did you  
15 get what is called the Pinkerton Rule of Law, and that is  
16 where all of them are members of a conspiracy and one of  
17 them commits a substantive act which is a part of the  
18 objective of the conspiracy and he commits it after you  
19 are satisfied beyond a reasonable doubt that he and the  
20 others were members of the conspiracy that had such a  
21 substantive objective in mind, and then even though he  
22 was the only one who committed those substantive acts or  
23 single act, for that matter, they are all equally respon-  
24 sible as though each had committed the substantive act  
25 by actual performance.



Mrs. Ryan, have you any doubt on that score?

JUROR NO. 8: No.

THE COURT: Do any of you? Do all of you get it? It is not easy. I want to be mighty sure.

JUROR NO. 5: I don't understand. May I ask, would you give it over?

THE COURT: Surely.

There is, I told you, another method by which you should evaluate the possible guilt of a defendant on Counts 2, 3 and 4 and which would sustain his guilt on that count even though the Government's proof was not sufficient to establish all the required elements as to him. I have already instructed you as to the crime of conspiracy of which the defendants are charged in the first count.

Now, if you find pursuant to those instructions that a defendant named in Counts 2, 3 and 4 -- to make it simple, that a defendant named in Count 2 and the same thing would apply to Count 3 and the same thing would apply to Count 4 -- if you find that a defendant named in Count 2 was a conspirator and hence guilty under the first count, you may find him guilty as well under Count 2 provided you find beyond a reasonable doubt each of the following:

First: That the crime charged in the particular

count, Count 2, was committed. You must be satisfied of that beyond a reasonable doubt.

Second: That it was committed during and in furtherance of the conspiracy charged in the first count; and,

Third: That defendant might reasonably have foreseen the acts constituting the offense of Count 2. If you find all these three to be facts and find each beyond a reasonable doubt, then each and every member of the conspiracy, just like a partner, is criminally responsible for the substantive crime charged in Count 2 and may be found guilty thereof. The reason for this is that a co-conspirator committing a substantive crime would in that case be an agent of the other members of the conspiracy.

For example, if you find beyond a reasonable doubt that one defendant committed the substantive offense specified in Count 2 and if you find that he and other defendants were members of the alleged conspiracy, and if you find that the acts which constituted the offense in Count 2 were done in furtherance of the conspiracy of which those defendants were members and that those defendants would have reasonably foreseen such acts, then you may find that each of those defendants is guilty of the offense



1  
2 alleged in Count 2, even though he did not personally  
3 commit that substantive crime.

4           It is very easy if each committed it. That is  
5 simple. Then you decide guilt: Yes, he did this and  
6 this one did it and this one did it. That is easy, but  
7 the law says even though only one did it and the others  
8 didn't do that particular substantive act, if one did it  
9 and the conditions I have laid down were met and fulfilled,  
10 then each of the conspirators may be considered as having  
11 done that, committed that substantive act.

12           Have I made it clear now?

13           We have covered Counts 1, 2, 3 and 4 alleged  
14 against each defendant on trial before you. There are  
15 two additional counts, Count 9 against the defendant  
16 Rivera alone and Count 12, against the defendant Hichez  
17 alone.

18           Let us look at Count 9 against Rivera and  
19 Count 12 against Hichez. In essence, each one of those  
20 counts, Count 9 and Count 12 charges them with illegally  
21 selling, exchanging, transferring, receiving and delivering  
22 counterfeit Notes.

23           Let me read you Count 9:

24           "The Grand Jury further charges:

25           "On or about April 10, 1975, in the Southern

1 District of New York, Jorgita Rivera, the defendant,  
2 unlawfully, wilfully and knowingly, did sell, exchange,  
3 transfer, receive and deliver false, forged and counter-  
4 feited obligations of the United States, to wit, counter-  
5 feit \$10, \$20 and \$50 Federal Reserve Notes in the approxi-  
6 mate amount of \$85,000, with the intent that the same be  
7 with the intent that the same be passed, published, and  
8 used as true and genuine."  
9

10 Count 12 charges exactly the same thing against  
11 Hichez.

12 To find the particular defendant guilty of the  
13 offense charged in Counts 9 and 12 -- that is Rivera in  
14 Count 9 and Hichez in Count 12 -- you must find beyond a  
15 reasonable doubt:

16 First: That on or about the date named in that  
17 count the defendant did wilfully sell, exchange, transfer,  
18 receive or deliver approximately the amount of \$10, \$20  
19 and \$50 Federal Reserve Notes specified in the count;

20 Second: That the Notes were counterfeit;

21 Third: That the defendant knew the Notes  
22 were counterfeit; and

23 Fourth: That the defendant intended that the  
24 Notes be passed, published or used as true and genuine,  
25 and each must be proved beyond a reasonable doubt.



I have already instructed what these elements mean with respect to Count 4. They mean the same thing here concerning Counts 9 and 12, and I will not repeat those instructions. It is not necessary for the Government to prove that the exact amount of counterfeit money specified in the count was sold, exchanged, transferred or delivered.

By the way, the amount in Count 9 is \$35,000 and the amount in Count 12 against Eichez is \$20,000.

The question of whether the bills are counterfeit is a question of fact for the jury to determine. In considering this question you will recall that you heard the testimony of the Secret Service agent who testified with regard to the counterfeit nature of these bills. While there has not been any serious dispute over this issue, you must, nevertheless, determine as a matter of fact whether or not these bills were actually counterfeit as alleged in the indictment.

The counts of the indictment charge the defendants with having unlawfully, wilfully and knowingly committed the offenses set forth. Although these words almost define themselves, nevertheless they are set forth in the counts of the indictment so as to make certain that no one would be convicted because of mistake or

mcsr

15  
1 inadvertence or other innocent reason. And so by the use  
2 of these words, "unlawfully, wilfully and knowingly,"  
3 the Government must prove beyond a reasonable doubt a  
4 specific intent to commit a crime before there can be a  
5 conviction as to each count in the indictment. An act  
6 or failure to act is done knowingly if done voluntarily  
7 and purposely and not because of some mistake or inadvertence  
8 or carelessness or other innocent reason.

10 More precisely, what is meant by wilfully in  
11 the eyes of the law means doing an act knowingly and  
12 purposely with bad intent. It means having the purpose  
13 to cheat or defraud or do a wrong. It means with a specific  
14 intent to disregard the law or to do that which the law  
15 forbids. It involves a conscious wrongdoing. Some do the  
16 act clumsily, stupidly; others smart, keen, sensitive  
17 movements. All of that goes to the issue of whether or not  
18 the person did the act.

19 On the other hand, wilfully does not mean  
20 inadvertence or carelessness, as I have already said.  
21 Wilfulness involves the state of the person's mind and  
22 that is an issue of fact as much as the state of his  
23 digestion and it is an issue that you are called upon to  
24 decide. Medical science has not developed an instrument  
25 which can record what was going on in a person's mind



1  
2 in the distant past or what motivated that person. The  
3 state of a person's mind may be inferred from words, from  
4 his actions, from his conduct.

5 It has often been said that you bring into  
6 the jury box with you your common sense and the experience  
7 of your daily lives in the marketplace, in your home,  
8 in dealing with all kinds of people. That is what makes  
9 a jury such a tremendous force for the administration of  
10 justice.

11 One of the greatest Judges that ever lived,  
12 Mr. Justice Oliver Wendell Holmes of the Supreme Court,  
13 told us very plainly that the law is not logic, it is  
14 experience, and most of our laws are based on the ex-  
15 periences of human behavior.

16 It is obviously impossible to ascertain or  
17 prove directly what was the operation of the mind or the  
18 intention of any defendant. But a wise and intelligent  
19 consideration of all the facts and circumstances shown by  
20 the evidence and the exhibits and the entire trial record  
21 in this case will enable you to come to a conclusion with  
22 a reasonable degree of accuracy what were the defendants'  
23 intentions.

24 Intent involves a mental attitude with a knowledge  
25 of a definite act, and with the knowledge of surrounding

mcsr

circumstances you may draw a definite and logical conclusion.

In your everyday affairs you are continuously called upon to decide from the actions of others what their intentions are. You've done it with little Johnnie, who keeps denying that he didn't go near the jam jar in the refrigerator, yet there is a little bit of jam on his ear. Sure, he denies it: "No, I didn't; no, I didn't." There is a piece of evidence right there. Before you know it, Johnnie admits to it which, by the way, brings us to another point, the tendency of human beings when held to account to resort to falsity.

How many people do you or I know who have committed a wrong have what it takes to say: I did it. I'm sorry. I'm on my knees craving your forgiveness.

The tendency of all human beings when caught, or most human beings, is to do exactly what little Johnnie does. Some of us never really grow up beyond Johnnie in our sense of morality and what manliness requires of us.

And so those experiences that you have had in life, the bitter, the sweet and the tangled and the simple, and the liars that you have met and the phonies, and the smooth operators and the sanctimonious ones who can be the worst fakers in the world, and the little guy that



1 lives in the hut, who doesn't know where tomorrow's bread  
2 is coming from and who is stalwart on the side of truth --  
3 you've seen them as I have. That is your strength.  
4 Bring all of those experiences right into that box as you  
5 look at the scene unfold before you.  
6

7 And so proof of the circumstances surrounding  
8 a man's actions can supply an adequate basis for a finding  
9 that a defendant acted knowingly and wilfully. The actions  
10 of a man must be set in their time and place. Just as  
11 the meaning of a word is understood only in its relation-  
12 ship to other words in a sentence, and so the meaning of  
13 the particular act may depend on the circumstances sur-  
14 rounding it.

15 Now, ladies and gentlemen, I want to be mighty  
16 sure that the next subject matter I take up with you is  
17 perfectly clear. It deals with the testimony relating  
18 to prior similar acts by some of the defendants which  
19 occurred prior to the conspiracy alleged in the indictment.  
20 I have touched upon that already.

21 Evidence that an act was done at one time or  
22 one occasion is not any evidence or proof whatever that a  
23 similar act was done at another time or on another occasion.  
24 That is to say, evidence that a defendant has committed  
25 an act of a like nature may not be considered by the jury

1 in determining whether the accused committed any act  
2 charged in the indictment.  
3

4 Then how may it be considered, this evidence  
5 dealing with prior similar acts? The jury may consider  
6 that evidence dealing with the alleged acts of a like  
7 nature solely in determining whether the defendant acted  
8 with guilty knowledge or intent.

9 Such evidence, relating to prior acts, may not  
10 be considered by the jury for any other purpose whatsoever.  
11 I emphasize, the jury is not to infer that the defendants  
12 have a criminal propensity or bad character because of this  
13 evidence.

14 I would like to say a few words with regard to  
15 direct and circumstantial evidence. You line up most  
16 lay people and they believe that circumstantial evidence  
17 doesn't count. Well, that may be their opinion but the law  
18 says otherwise. Circumstantial evidence in the eyes of  
19 the law is as important as direct evidence, and you can  
20 find a person guilty on circumstantial evidence alone,  
21 and why? Because in the commission of a crime there isn't  
22 that recording, the notariety with regard to one's steps  
23 known by family, firm, members or whatever. There it is  
24 all secretive, so that much of the behavior pattern followed  
25 by an alleged criminal must be judged by the acts that were



1 mcsr

2 committed, the behavior, et cetera, et cetera -- circum-  
3 stantial evidence from which a jury can determine whether  
4 it is satisfied beyond a reasonable doubt of the intent,  
5 the criminal intent, of the accused.

6 So what do we mean by circumstantial evidence  
7 and what do we mean by direct evidence? Well, I'm  
8 looking at you. That is direct evidence. If I said to  
9 the Clerk: Has the jury arrived, all of them? And he  
10 says, yes, even though I don't see you I know that the  
11 Foreman and each one of you has arrived. That is cir-  
12 cumstantial evidence.

13 Suppose when you came in here today it was  
14 bright and sunshiney. Oh, you plan to do things with a  
15 day like this other than sit in the jury box, but there  
16 it is, a lovely day and you are sitting here. In comes  
17 a man and he sits down and he is dripping wet. His clothes  
18 are wet. There is a puddle formed at his feet. That is  
19 circumstantial evidence that it has rained since you came  
20 into the courtroom. If you saw the rain with your own  
21 eyes that would be direct evidence. But each is equally  
22 valuable in the eyes of the law. That is all there is to  
23 it.

24 It is rare indeed that there is direct evidence  
25 on knowledge, very rare. When a man makes a will there it

1 is in writing. He signed it. It was witnessed. You  
2 know exactly what he intended. But how many acts in life  
3 are comparable to that kind of completeness. We judge  
4 intent usually from the acts as facts and circumstances  
5 from which you arrive at a conclusion. Knowledge is  
6 generally shown by circumstantial evidence. Direct  
7 evidence, then, is testimony as to what a witness saw,  
8 heard or observed, what he knows of his own knowledge.

9  
10 Circumstantial evidence, on the other hand,  
11 rests on an inference. Proof is given of facts, like the  
12 umbrella, wet clothing and one infers therefrom what  
13 reasonably follows in the common experience of mankind.

14 I point out to you that circumstantial evidence,  
15 if believed, is of no less value than direct evidence.  
16 There is no requirement that proof of a crime and a  
17 defendant's guilt can be by either or both types of  
18 evidence. The only requirement is that such proof is  
19 beyond a reasonable doubt.

20 Marshal is the food here for the jury?

21 A DEPUTY MARSHAL: Yes, I believe so.

22 THE COURT: There is no law, ladies and  
23 gentlemen, that says I have to finish. This is a great  
24 break for you and for all of us. Go have your lunch.  
25 Take your time. When you get through with your lunch I will



1 mcsr

1592

2 carry on and complete the charge.

3 [The jury left the courtroom.]

4 THE COURT: Marshals, will you bring the jury  
5 back by 2:15; can you do that?

6 A DEPUTY MARSHAL: If it is your order, your  
7 Honor, they will be here.

8 THE COURT: All right, because the jury did not  
9 go out to lunch. They are having their lunch, sandwiches,  
10 in and so we can go forward. Let's meet promptly at  
11 2:15.

12 [Trial recessed until 2:15 p.m.]

AFTERNOON SESSION2:15 p.m.

THE COURT: Ladies and gentlemen of the jury, I'm coming towards the close of the Court's charge and the items I'm going to take up should come easily to you.

There is something I want to say as to the law with regard to flight. You remember that there was some evidence that defendants charged in this indictment ran when the authorities closed in. If you are convinced that a defendant fled immediately after engaging in conduct that would be criminal if done knowingly, such flight is a fact from which you may, but need not, infer a consciousness of guilt on his part. It is evidence which you may consider along with all the other evidence in determining the defendants' guilty knowledge. The weight and the significance of the evidence, of course, is for you and you alone to determine.

In your consideration of the evidence of flight in this case you should consider there may be reasons for this which are fully consistent with innocence. These may include a general fear of confrontation with authorities or fear of being apprehended. They may suggest also that flight was not necessarily a reflection of feelings of



1 mcjb 2

2 guilt and also that feeling of guilt does not reflect actual  
3 guilt. That is for you to determine, depending upon your  
4 assessment of the facts and circumstances surrounding the  
5 flight.

6 This particular portion of the law relates only  
7 and is binding only on the person engaged in flight and on  
8 no one else.

9 Now, let's take up what has been very often re-  
10 ferred to throughout the trial and particularly in summa-  
11 tion as accomplice testimony. What is an accomplice? I'm  
12 sure most of you, if not all of you, know what is meant by  
13 that. An accomplice is any person who participates in the  
14 commission of an alleged offense. The accomplice, an asso-  
15 ciate in performing a crime, has the purpose of either pro-  
16 moting, facilitating, encouraging or aiding another in  
17 committing a particular crime.

18 The fact that a number of Government witnesses  
19 are accomplices is to be carefully considered by you as  
20 bearing upon their credibility. That means their believ-  
21 ability. It is to be expected that the participants in an  
22 enterprise so unholy and illegal will not be upright gentle-  
23 men.

24 You must realize, I am sure, that in the prosecu-  
25 tion of a trial the Government is frequently called upon to

1 mcjb 3

2 use witnesses who are accomplices. Often it has no choice.  
3 This is particularly so in cases of conspiracy. Frequently  
4 it happens that only the members of the conspiracy and their  
5 accomplices have evidence which is relevant to and important  
6 in the case.

7 However, it does not follow because a person has  
8 acknowledged participation in a crime or is an accomplice  
9 that he is not capable of giving a truthful version of what  
10 occurred. That is for you and only you, not the Judge, not  
11 the lawyers, to determine.

12 As with courage, so it is with truthfulness. It  
13 frequently comes from the most unlikely sources. Those from  
14 whom we rightfully expect the truth very often we find it  
15 not forthcoming, and those from whom we would hardly expect  
16 it, from them sometimes a veritable avalanche of convincing  
17 disclosure gushes forth.

18 The testimony of such persons, however, should be  
19 viewed with caution and scrutinized with the utmost circum-  
20 spection.

21 What I am emphasizing is that that particular  
22 element or elements does not automatically nullify them.

23 But you have to decide that issue. And so you will consider  
24 whether the testimony was inspired by self-interest, personal  
25 advantage, hostility or whatever human factor may be involved.



mcjb 4

You should consider whether the testimony of such witnesses was a fabrication induced by a promise or even a belief that they will receive favorable consideration in their respective cases.

There is no requirement in the Federal Court that the testimony of an accomplice be corroborated, none whatever. Corroboration is out. There is no imperative of corroboration in a criminal case in a Federal Court and there is none required in this case. Conviction may rest on the uncorroborated testimony of an accomplice, if you believe it and find it credible.

I instruct you that an accomplice's testimony implicating a defendant as a perpetrator of a crime is inherently suspect, for such a witness may well have an important personal stake in the outcome of a trial. An accomplice so testifying may believe that the defendants' acquittal will vitiate expected rewards that may have been either explicitly or impliedly promised him in return for his plea of guilty and for his testimony.

To acquit a defendant you need not find that any witness against him has lied. The test always is: Are you satisfied beyond a reasonable doubt that the entire record, in accordance with the Court's instructions, of the guilt beyond a reasonable doubt of each of these defendants on

1 mcjb 5

2 trial.

3 And so, if you find the testimony of any of these  
4 accomplices was deliberately untruthful, throw it out. If  
5 upon a cautious and careful consideration you are satis-  
6 fied that the witnesses have given a truthful version and  
7 the Government has sustained its burden of proof beyond a  
8 reasonable doubt in all other respects as outlined in my  
9 instructions, then you have sufficient proof on which to  
10 bring in a verdict of guilty.

11 Otherwise, the defendants are entitled to an ac-  
12 quittal.

13 I mentioned before the tendency of human beings  
14 to lie when confronted with an accusation. You bear that  
15 in mind -- the natural instincts of people. Is that your  
16 impression from this testimony with regard to these particu-  
17 lar people? Or did you get the impression that any one or  
18 all are nothing but unmitigated liars? That is for you.  
19 It is all right for any one of us to get up and bang away at a  
20 witness and we have got a perfect right to say that, says  
21 a lawyer, he is a rotter, unworthy of consideration at  
22 all of any kind. He is this. He is that. That is to be  
23 considered, of course.

24 But the final analysis and the final grading is  
25 yours.



mcjb 6

As you contemplate the testimony before you of the confessed perjurer, I will suggest you might consider whether he presented an instance of purge or perjury. Was his testimony induced by a genuine desire to purge or cleanse himself of past transgressions, having been caught and having to face a judge on sentence? Can you believe that that is what motivates him to come forth with his testimony, that he is building it up in order to make a good impression, so that he can get credit, so he believes, at the time of sentence?

Or did you get the impression that he was wise enough to know that he was being carefully watched and would know that he was carefully watched by a judge and prosecutor alike as well as by the jury and did he consider the impossibility of overcoming that enormous hurdle?

All that is for you and I would suggest the most important part of your function. Was the witness, that accomplice, one after another, as you looked over, as you heard the testimony, as you heard the self-condemnation -- was that an instance of someone who says, in effect, the jig's up, I'm in the net?

From time immemorial some humans have said under those circumstances there is only one course left and that is to come clean. There comes a time when that decision is made and that is what they maintain happened with them. Do

1 mcjb 7

2 you buy it? That is up to you.

3 The Government reminds us, and correctly reminds  
4 us, that there is other proof of a reliable character that  
5 has been presented to you in support of the indictment.  
6 And so you will knit them together, piece them together,  
7 as you should, to see, as you pursue the search for the  
8 truth, what evaluation you conclude is warranted of each  
9 of the accomplices.

10 And so what I'm trying to say is that it is your  
11 estimate of the testimony given by each witness that is  
12 controlling and not that advanced by the attorneys or sug-  
13 gested by anybody. They have a right to give you their  
14 interpretation of the facts, but you are the sole judges  
15 of the facts and the greatest burden you are going to have  
16 is to estimate that testimony.

17 It is not, of course, the large number of witnesses  
18 called by one side as against the number called by the other  
19 that counts. Quality of proof is really the test. Incon-  
20 sistencies or discrepancies in the testimony of a witness  
21 or between the testimony of different witnesses may or may  
22 not cause the jury to discredit such testimony. In weighing  
23 the effect of such a discrepancy consider whether it per-  
24 tains to a matter of importance or to an unimportant detail  
25 and whether the discrepancy results from innocent error or



mcjb 3

from wilfull falsehood.

If you find that any witness has wilfully testified falsely as to any material fact, you may reject all the testimony of that witness or you may accept such portion or part which commends itself to your belief.

Where a witness has been impeached on the basis of a prior inconsistency or inconsistent statement, he may also endeavor to explain the effects of the supposed inconsistency by relating whatever circumstance or circumstances would remove it.

However, such explanation bears only on the witness' state of mind and is not received as proof of the facts that this witness testifies to.

In sizing them up in your search for the truth, as you apply it to each witness, you should be guided by your plain, everyday common sense. You saw each witness, you observed the manner of his giving testimony. Out of the welter of testimony you are called upon to determine the factual issues in the case.

Thus, upon all the evidence, you, the jury, are to resolve the conflict.

To acquit a defendant, ladies and gentlemen, you need not find, I repeat, that any witness against him has lied. The test always is, and I repeat it again and again

mcjb 9

and again: Are you satisfied beyond a reasonable doubt from the entire record in accordance with the Court's instructions of the guilt beyond a reasonable doubt of each defendant on trial.

If upon a cautious and careful examination you are satisfied that the witnesses have given a truthful version and the Government has sustained its burden of proof beyond a reasonable doubt in all of the respects as outlined in my instructions, then you have sufficient proof on which to bring in a verdict of guilty. Otherwise the defendants are entitled to an acquittal.

Your great strength, I repeat, is in your common experience with humanity. You determine the value of the testimony of each witness, and that is what we mean when we say it is the jury's sole province to weigh the testimony. That is what you do, you weigh it. What about this witness? What impression did I get from his testimony? Did it come across in convincing fashion? How did he behave on the stand? I watched him, as I was bound to, as the Judge instructed. I kept my eyes on him. I heard him, what he had to say, plus my reaction to his deportment on the stand. What do I say as to him?

Employ such additional criteria or indicia of truthfulness which life has taught you to apply as a



mcjb 10

measurement.

And so you should ask yourselves: How does his testimony impress me? What degree of credit you should give the witnesses' testimony should be determined by his conduct, his manner of testifying, his relation to the controversy, his bias or impartiality and the reasonableness of his statements. Is the witness interested in the outcome of the case? Is there a motive to testify falsely? Was the witness mistaken? Was he correct?

In other words, what you try to do, to use the vernacular, is to size up a person, just as you would in any important matter when you are undertaking to determine whether or not a person you are dealing with is truthful, candid and straightforward.

A witness may be discredited or impeached by contradictory evidence that at some other time he has said or done something or failed to do or say anything which is inconsistent with his present testimony. The testimony of any witness whose self-interest is regarded convincing to you is to be considered with great caution and weighed with great care. You should consider the witness' intelligence, motive, state of mind and demeanor while on the stand. You should consider his candor, or lack of candor, his possible bias, his means of information, and the

mcjb 11

accuracy of his recollection.

If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give that witness' testimony such credit as you think it deserves.

Your determination of the credibility of a witness very largely depends upon the impression that he made upon you and the conviction with which he testified as to whether or not he was giving an accurate version.

The fact that a witness is an official or employee of the Government does not mean by itself that you should give greater or special credit to his testimony. The testimony of any such witness should be weighed and scrutinized in the same manner as any other witness who has testified in this case. You judge their testimony in the same way, taking into account interest or any factor which may have influenced them to color or fabricate their testimony.

Certain defendants have not testified in this case, and this is their absolute constitutional right, and as you go about in the jury room talking with earnestness, I'm sure, about the case, if anyone should say: Well, why didn't so and so or so and so take the stand, have the fortitude in the name of common decency as an American minister of justice to say to that person: You have no right, not even to the extent of a grain of sand, to hold



1 mcjb 12

2 it against a defendant because he didn't testify. That is  
3 what the Judge said was the law, and if you didn't under-  
4 stand it, let's go out and ask the Judge.

5 All I'm saying is that all these principles of  
6 law are more important than all of us put together, includ-  
7 ing the Judge. I'm for the principles of law first, last  
8 and always. Every molecule of my being is saturated with  
9 that, the principles of law, not with what someone who has  
10 temporary authority wants to lay down as the law.

B19

11 As a surgeon devoted to his work to his dying day,  
12 he would denounce the nurse or the helper who failed to  
13 sterilize the knife that had fallen to the floor, and if he  
14 hasn't got the vigor and the decency to denounce such a  
15 shabby, dirty piece of offensive deportment, he has no right  
16 to be a surgeon or a judge or a lawyer or a juror.

17 So when I say a defendant in a criminal case in  
18 America does not have to testify you may say, "Why not?"

19 Well, go and read the books. Remind yourselves  
20 of your history in high school and college about the way  
21 men were torn to shreds because they failed to say yes to  
22 something when they believed the answer is no. The humilia-  
23 tion and degradation and physical and mental torture that  
24 history shows was inflicted upon them in all parts of the  
25 world including our own -- and so as the law was molded it

mcjb 13

denounced that kind of thing and said: You've got something against a man? Prove it. Prove it against him beyond a reasonable doubt and don't touch him. If he doesn't want to testify, he doesn't have to and you can't hold it against him.

Remember when you were children and you had games? This is all we speak of, all of life being a game. A game of what? Fakery? No, a game according to the rules. So when you played the game as a child you knew that a certain piece in that game had a certain value. Other pieces had greater value. Still others had no value at all.

Well, you are faking if you give a value not assigned in a game to a piece that has no value or little value and you give that piece mangy consideration and thrust aside the important rule with regard to other pieces in the game. Is that playing the game honestly?

And so when we say beyond a reasonable doubt, I'm not saying it was or was not, but I want you to remember the test. I want you to remember that is all you were supposed to look at, the evidence. Don't let me have the heartache that I get talking to jurors after the case is over to find the injection even of a prejudice and tell me to like it and not to burn up with it.

Plainly speaking, in an American Court a juror in



mcjb 14

doing his duty hasn't the capacity morally and mentally to meet the challenge, that person betrays and befouls the oath in undertaking to sit in judgment.

If these defendants, or any of them, are guilty, it is your sworn duty to find them guilty, and if they are not guilty under the facts and the law it is your sworn duty to acquit them. It is your sworn duty, either way. You are not here to do anybody any favors. You are here to do a sworn obligation, fulfill it.

I could have gotten through with this charge in an hour. What do you think I'm spending all this time for, if not to break it down into the simplest form of expression so that you get each and every point of law and understand what your obligation is. How would any of you like it if the Judge said with regard to a judgment that he has to render: "Who is it, some colored guy, some yellow man, some whitey?" Would you like that? Or, "Leave me alone, I'm tired. Where do I sign? Take it out of here." Is that doing duty? Is that justice?

Well, if a judge hasn't got a right to do that, and he certainly hasn't, he ought to be kicked off the bench if he does. You have no less an obligation.

So when I say to you that a defendant has no obligation whatever to testify, it is just that and nothing

mcjb 15

less than that. He has no obligation to call any witnesses, adduce any proof of any kind. That is the law, that is America, and it works, because if the case is strong enough a conviction will lie based on strong presentation of evidence and the law applicable to that evidence, and if it isn't strong enough to meet the test, out it goes.

So, you'll see that what I told you earlier, how it naturally follows that a defendant need not take the stand, need not adduce any proof of any kind since the burden rests upon the Government -- and remember I told you that the burden of proof never shifts to a defendant -- the defendant need not take the stand or call witnesses because it still remains the burden of the Government to prove the guilt of the defendant beyond a reasonable doubt.

Now the fact that I keep on saying it is just to constantly remind you of the measurement of proof and by no means to indicate how the Judge feels as to whether or not that measurement has been met or not. I just want to be mighty sure you know what that measurement is and that you apply it to the proof in this case; use the law as given to you by the Court, apply it to the facts as you find them to be and come up with your determination.

In conclusion, then, on this point in no respect might the fact that a defendant did not testify enter into



1 mcjb 16

2 your deliberations. If you do it, you befoul your oath and  
3 you are guilty of a crime that is as reprehensible as any  
4 brought against these defendants.

5 What has the law to say with regard to a defen-  
6 dant who does testify? One of the defendants, Hichez,  
7 took the stand. What has the law to say with regard to a  
8 defendant who testifies? The law permits but does not re-  
9 quire a defendant to testify in his own behalf. The tes-  
10 timony of Hichez is before you. You and only you can deter-  
11 mine how much credibility or believability his testimony is  
12 entitled to or how little.

13 However, I instruct you that it is the law that  
14 interest creates a motive to give false testimony; that the  
15 greater the interest the stronger is the temptation, and  
16 that the interest of a defendant in the result of a trial  
17 is of a character possessed by no other witness and is,  
18 therefore, a matter which may affect the credence which shall  
19 be given to his testimony.

20 However, let me point out that the fact that the  
21 defendant Hichez has such an interest in the case does not  
22 mean that he will testify falsely. It is for you, the jury,  
23 to decide whether he testified truthfully and how much  
24 weight to give to his testimony.

25 Even though I don't think there has been any

mcjb 17

challenge to the expert witness, let's say a few words as to the law on expert witnesses. Witnesses who by education and experience have become expert in some art, science, professional calling may state an opinion. An ordinary witness may not state an opinion, but such a one may state an opinion as to relevant and material matter in which such a person professes to be expert and may also state the reasons for the opinion.

You should consider such expert opinion received in evidence in this case and give it such weight as you may think it deserves.

If you should decide that the opinion of an expert witness is not based upon sufficient education and experience -- I don't see how you can because his expertise was stipulated and agreed upon, so that portion of the charge is out. But if for any reason you were not impressed by his testimony, you have a right, despite the stipulation, to disregard it or to belittle it.

There is no presumption against the Government from its failure to call a witness when it appears that his testimony would be merely cumulative or repetitious and of no greater value than that of witnesses who have in fact testified.

Whenever a person is equally available to both



mcjb 18

sides to testify, that is, when he can be subpoenaed to testify by either the defense or the Government and neither side calls him as a witness, you are not permitted to draw any inferences against either the defense or the Government for their failure to call that person as a witness.

You may not draw any inference, favorable or unfavorable, towards the Government or the defendants on trial from the fact that certain persons were not named as defendants or, having been named or on trial are not now on trial before you. Those matters are wholly outside your concern and have no bearing on your function as jurors.

Remember the charts and the diagrams that were before you? They are not evidence before you. They are merely representations of information or data as set forth in the testimony of witnesses or in documents that have been received in evidence. They are entitled to no more weight than the testimony or the documents upon which they are based. It is for you to decide whether these charts correctly present the data set forth in the testimony and in the exhibits on which they are based.

Now, I conclude: Ladies and gentlemen, when we lay down as law the letter, the spirit of the law, that a defendant is presumed to be innocent until the Government fulfills its obligation of proving him guilty beyond a

1 mcjb 19  
 2 reasonable doubt, and we laid down all these other sacred  
 3 propositions of law that I have tried to emphasize and to  
 4 delineate for you, each one equally important, we must not  
 5 lose sight of the rights of the other party in this litiga-  
 6 tion, the plaintiff, the Government. We must bear in mind,  
 7 and I so charge you, an equally vital concept of justice,  
 8 defined in classic fashion by the Supreme Court of the  
 9 United States, and hence the law of the land...justice  
 10 though due to the accuser, is due to the accused also.

11 Criminal responsibility is rooted in the indi-  
 12 vidual, his intention, his motive, his conduct.

13 If you find the law has not been violated, you  
 14 should not hesitate for any reason to return a verdict of  
 15 not guilty. That would be your sworn obligation. But, on  
 16 the other hand, if you should find that the law has been  
 17 violated as charged, you should not hesitate because of  
 18 sympathy or any other reason to render a verdict of guilty  
 19 because in your concept of what is required here that would  
 20 be the justice of the case, if you so decide. And if that  
 21 is your decision, it will also constitute a clear warning  
 22 that a crime of this character may not be committed with  
 23 impunity. The public is entitled to be assured of this.

24 Now we come to a word or two on sentencing and  
 25 punishment. That whole thing is not before you at all.



mcjb 20

It would take me several hours to explain the law. The fact is that a lot of work goes into the delivery in a Federal Court of the sentence. A lot of people know nothing at all about it and they have no concept whatever of what is confronted by the Court or what the Court has to look at and be guided by. It is not at all what most people think. It is not just the act which was committed and of which the defendant either confessed or was found by a jury to have committed. It is the whole life history of the human being. All of these factors are added up before a sentence is imposed. A whole life history, like an X-ray, unknown to the world, becomes the evidence upon which the Judge bases a sentence.

But you have enough to do and there is no reason in the world why you have to spend a moment with regard to any of this business of punishment, except as one of the items that you will add up in connection with deciding what motivated the testimony of witnesses who have yet to come before the Court for sentence.

Under your oath as jurors you cannot or must not allow a consideration of the punishment which may be inflicted upon a defendant before us on trial if he is convicted to influence your verdict in any way. If you did that, you would clearly violate your own oath.

mcjb 21

Suppose in a criminal case -- let's not take this case, take another criminal case. How do you know what that defendant is and what his background is, a defendant who hasn't taken the stand and against whom you can't hold a thing because he hasn't taken the stand. How do you know who he is?

So you lay off of that because the Judge says it is none of your business.

A sadness has come to me because well-meaning jurors have nevertheless allowed that to enter into their determination and have acquitted. It is enough to make my flesh crawl. Meaning well, they stab justice right in the gut, even though the Judge says you don't touch it. It is those things I rail against. I'm not interfering with a jury's right. You heard me. I have the right to denounce some of this testimony, to praise it, to give you a high value, to give you a low value. I haven't done it. I want you to do it. It is your job. I'm content to let you do it, but I don't want anything to crawl into it that doesn't belong. Then there is no justice.

The indictment names these three defendants. As you know, in determining the guilt or innocence of each of these three defendants, you must bear in mind that guilt is personal.



mcjb 22

I told you that backwards and forwards. Why do I keep saying it? Because there are jurors who keep on saying: Well, so and so did plead guilty and this one pled guilty and this one and this one and so forth and the defendants on trial must therefore be guilty. "It shows that they are; it seems to indicate." How do you get before a jury that they dare not do that?

So you are forbidden from doing it, and if you do it, you will violate your oath. So each charge, don't forget, of the six charges must be determined and I will give you some kind of an outline so as to make it easy: Count 1 against A, B, C. Is A guilty or not guilty? Is B guilty or not guilty? Is C guilty or not guilty? Then as to Count 2 you get a brief idea, a reminder of what Count 2 is. Count 2 deals with such and such and then as to each one, guilty or not guilty.

In that way you are giving a verdict as to each defendant and with respect to each criminal charge against him. How else are we going to know what your verdict is with regard to each defendant and with regard to each criminal charge against each defendant, except when you pronounce them? Is that clear?

The verdict, whether an acquittal or conviction, must be unanimous. Each juror is entitled to his own

mcjb 23

opinion. You should, however, exchange views with your fellow jurors. That is the very purpose of jury deliberation, 12 jurors, not one or five or seven or 11.

B21 You have a right to your opinion, but you must discuss it with one another. You must give each the benefit of your views.

So the law says that you must listen to the arguments of your fellow jurors, you must consult with one another, you must reach an agreement based solely and wholly on the evidence, if you can do so without violence to your own individual judgment, and to employ that high degree of genuine courage that you justifiably expect especially in these perilous times from your public officials.

You should not hesitate to change an opinion which upon a consideration of all the evidence with your fellow jurors appears erroneous. However, if after carefully considering all the evidence and the arguments of your fellow jurors you entertain a conscientious view that differs from others, you are not to yield your convictions simply because you are outnumbered or outweighed.

I am going to direct that the exhibits and the copy of the indictment insofar as the charges against these three defendants on trial is concerned should be sent to



mcjb 24

you promptly.

If, to help you in your deliberations, you wish a point or points in the testimony read, please remember that it takes time, that we are ready to do it, that we are here to help accommodate you and to help you carry forward your mission. Tell us exactly what it is that you wish to be found out of all of this testimony and it will be read to you, no matter how long it takes.

Your oath, ladies and gentlemen of the jury, sums up your duty, and that is without fear or favor to any man you will well and truly try the issues between these three defendants and the United States of America according to the evidence given to you in open Court and the laws of the United States, and that is exactly what you swore to do.

I have every confidence that you will fulfill your sworn obligation as American ministers of justice to render a true verdict based solely and exclusively on the facts and on the law in this case.

If the Government has carried its burden in accordance with the evidence and the law as to the defendants, you must not flinch from your sworn duty, you must convict. But if it has failed to carry its burden as to a defendant, your sworn duty is to acquit.

I think I may have told you of an account of one

mcjb 25

of the great judges of the United States Supreme Court, Mr. Justice Robert Jackson from New York. I wish it had been my privilege to have known him better. You remember he represented America at the Nuremberg trials. He sat on the Supreme Court of the United States and he was an outstanding jurist. Why? Because he knew the books? Not at all. He agreed with the great observation that books are a bloodless substitute for real life, and that is where the jury comes in. We don't ask you about your medals of academic recognition. We ask for your experience with life.

Not only did Justice Jackson know the law and the books but, equally important, he knew human nature, its strength, its weakness, its foibles, its glory and how to detect it, almost smell it out.

One day -- he is no longer among the living -- at an address in the midwest, during the course of a group of admiring lawyers said to him: Mr. Justice, what do you expect, sir, of a judge?

And without batting an eye he said: "I expect him to do his utmost to call them as he sees them as they come across the plate, just the way that umpire is doing over at that game."

And if that is applicable to a judge, and it certainly is, it is equally applicable to you as the judges



mcjb 26

of the facts. You call them as you see them as they come across the plate.

And this I say with measured tones: You have undoubtedly talked about justice in your homes and in your daily affairs, in your comings and your goings, as is your inalienable right. The point is that now each one of you sits in the seat of justice. How will you do when you apply your criticism of justice to yourselves? Will you call them as you see them? Will you stick to the facts as the Judge implored you? Will you do justice as between the Government on one side and each defendant on the other solely on the facts and on the law?

This Judge has every confidence that you will do exactly that.

I ask you to be good enough to wait right where you are while I talk to counsel in the robing room. Come in, Mr. Court Reporter.

(In the robing room.)

THE COURT: Gentlemen, exceptions or requests by the Government.

MR. DEVORKIN: One very minor thing, Judge. I think it would proper to indicate that they don't have to find that the events occurred at the exact date it is stated in the indictment. That is the only thing the

1 mcjb 27

2 Government wishes to say about the charge.

3 THE COURT: I will mention that. I take it there  
4 is no objection to my doing that?

5 MR. CURLEY: I would object because I think it has  
6 been adequately covered.

7 THE COURT: And to add something at this late hour  
8 would be putting undue emphasis on it?

9 MR. CURLEY: Yes.

10 THE COURT: I remember distinctly saying "on or  
11 about."

12 Mr. Curley, what have you got?

13 MR. CURLEY: I had previously opposed the Pinker-  
14 ton charge and I think for the record I will just repeat my  
15 objection to that.

16 THE COURT: Yes, surely.

17 MR. NADEN: Can all counsel join in each other's  
18 exceptions or objections?

19 THE COURT: Yes. All you have got to do is just  
20 say so.

21 MR. CURLEY: I do object to one statement the  
22 Court made that the jury can evaluate the testimony of the  
23 accomplices.

24 In addition to the usual instructions to the jury  
25 as were anticipated, I understood the Court to include a



mcjb 28

comment, did the witness realize that he was being watched by the Judge and prosecutor as well as by the jury and, in effect, if he is smart enough or sufficiently prepared to hurdle that obstacle.

You may recall last night that I commented upon, made my objection to Mr. Devorkin's numerous instances of indicating to the jury that these witnesses who were accomplices would have to come before your Honor for sentencing and it seemed to me that that implied that your Honor had more insight into the true facts of the case or in the eyes of the jury was a superior fact finder, and I think that this comment of your Honor again highlights that problem, that the jurors may realize that the Court has the authority to strike such testimony as you have indicated and the prosecutor can do so and that since the evaluation of these accomplice witnesses has been left to the jury, it implies that the Judge and prosecutor are satisfied with the truthfulness of that testimony.

THE COURT: No, not at all. I think you misstate the objective of the Court in calling that factor to the attention of the jury. All I was doing was asking them to take the true measure of that kind of a witness: Was he feeding us all because he wanted to give himself as much of a break, so to speak, or was he just inventing all of this

1 mcjb 29  
2 in order to be on our good side? Was that his motive?  
3 Or is it likely -- and this is something for you to con-  
4 sider -- that he recognized that no matter how much he  
5 might want to lie he wouldn't dare do so because the Judge  
6 is watching what he says, the prosecutor is watching what  
7 he says, and the jury is watching what he says, and there-  
8 fore he would be inclined to come forward and tell the  
9 truth. That is for you, I said, for them to consider, and  
10 that is an equally important possibility as is the possi-  
11 bility that the witness got on the stand and for one reason  
12 or another falsified all the way down the line.

B22

13 That is all I was doing. I was just asking them  
14 was it this or was it that or whatever else you may think.  
15 compelled the witness to testify in the manner that he  
16 did. It is not the Judge putting a superior evaluation on  
17 anything. It was just suggesting that the jury take the  
18 true measure of the witness.

19 All right, what else is there, Mr. Curley?

20 MR. CURLEY: My final objection, your Honor, is  
21 as to the witness Facundo. The Government brought out that  
22 he had been placed on probation by Judge Stewart. I think  
23 the defense in general would have been happy to have that  
24 knowledge kept from the jury, but it did come out.

25 I know I did attempt to show that he had in a sense



1 mcjb 30

2 violated probation, whether or not he had been formally  
3 charged.

4 In your Honor's charge you pointed out that the  
5 jury was not to give any sympathy and mentioned certain  
6 aspects which are properly considered at the time of sen-  
7 tencing by a District Court Judge, and you pointed out that  
8 the whole aspect of a defendant's life is considered more  
9 or less, so I think the jury can infer that Judge Stewart  
10 placed Facundo on probation notwithstanding the serious  
11 crime to which he had been sentenced because the other as-  
12 pects of his life are practically blameless.

13 THE COURT: No. I told the jury, implored the  
14 jury not to go into what was the basis of any sentence and  
15 not to be affected by that at all; not to go off the deep  
16 end by going into it, because it was all in the dark. That  
17 is all I was saying to them and, in fact, Mr. Curley, you  
18 without hesitating a moment in your summation flayed the  
19 Judge, whether you knew you were doing it or not, by your  
20 saying: Here's the Judge who let this man on probation  
21 when he should have handed him a good sentence of imprison-  
22 ment. That is exactly what you said.

23 You don't know any more than I do -- maybe you  
24 do -- as to what it was the Judge had before him in this  
25 case. I don't know. I don't know what factors there were.

1 mcjb 31

2 At any rate, it was enough for me to say to the  
3 jury: Please don't go into any of that. You have a right  
4 to remember, as was pointed out, that he got a suspended  
5 sentence, but don't judge the guilt or innocence of these  
6 people by the fact that another man said to be much more  
7 powerful if his whole setup got a suspended sentence and  
8 therefore let these little fellows go.

9 That is all I was saying and that is all I think  
10 we have got to deal with on the sentencing. So, at any  
11 rate, that is it and your objections are noted and the  
12 Court will stand on the charge.

13 Mr. Naden.

14 MR. NADEN: Several points that I would like to  
15 raise, if it please the Court.

16 THE COURT: Surely.

17 MR. NADEN: The first point. Your Honor discussed  
18 that piece of evidence which regards the alleged act com-  
19 mitted by my client that he is alleged to have rented an  
20 apartment to the people who were making negatives.

21 THE COURT: The overt act that I read.

22 MR. NADEN: Yes.

23 THE COURT: Yes.

24 MR. NADEN: Your Honor said that on its face it  
25 is an innocent act to rent an apartment.



mcjb 32

THE COURT: Yes.

MR. NADEN: Then you continued with these words:

"It is an overt act."

I think what the Court probably intended at that time was to indicate to the jury that this particular act is alleged to be an overt act which my client performed.

But the manner in which the Court conveyed this information to the jury seemed to indicate to them that renting an apartment was, in the context of this case, an overt act.

I think, if you recall my summation and the whole evidence in this case, the totality of the evidence, my summation was that there was no evidence that my client rented an apartment.

THE COURT: All I did was give them an illustration of an overt act and I happened to use the overt act dealing with a defendant still on trial and not with regard to defendants who are no longer before the jury.

I saw the one with regard to Araujo and I read it word for word. I said that is listed as an overt act. I didn't say that that meant that they were to conclude that your client intended to do that. I implored the jury over and over again, from all the evidence, to apply to each defendant or to ask the question: Did he intend to

1 mcjb 33

2 participate?

3 Especially with regard to your client, I thought  
4 of the spectator or the person who just does a little  
5 accommodation and still is not a member. I went to great  
6 lengths on that.

7 MR. NADEN: I appreciate that portion. I was  
8 just afraid when you made the first part of your comment  
9 that on its face it was an innocent act, and then continued  
10 on that to rent an apartment is an overt act, the Court  
11 either mistakenly -- I don't think it was inadvertent --  
12 went on to indicate an overt act is a matter of law.

13 But the language the Court used, that an overt  
14 act seemed to indicate that --

15 THE COURT: I'm sorry, but from the totality of  
16 the Court's charge it is incumbent, whether it is listed or  
17 not, for the Government to prove it and the Government has  
18 got to prove it. That was your argument and I agree with  
19 you that the Government has got to prove it beyond a reason-  
20 able doubt, that is, that your client was a willing member  
21 of that conspiracy.

22 MR. NADEN: I made the record on that.

23 The second point. Your Honor charged, which sur-  
24 prised me, on the law of the flight. I have no exception  
25 to the law as your Honor charged it, but the Court did



1 mcjb 34

2 state in the charge "that some evidence was in the record  
3 that the defendants charged in this indictment ran when the  
4 authorities closed in on them," and I'm only quoting the  
5 Judge because you called attention to a story where a  
6 lawyer quoted word for word and I made sure I had my pen-  
7 cil out.

8 THE COURT: Very good. I'm quite sure I said it  
9 just the way you read it.

10 MR. NADEN: It is pretty close.

11 In any event, there is not a shread of evidence  
12 in this record that anybody ran and I'm afraid there is the  
13 regrettable inference that it was my client that ran, when  
14 the evidence is that my client conducted the police to this  
15 apartment and there were already two people inside the  
16 apartment.

17 THE COURT: No, I was referring to the flight  
18 when they were behind the trunk of the car to get the real  
19 money.

20 MR. HERWITZ: Your Honor, that request was made  
21 when Irrizarri was still there.

22 THE COURT: Are any of these three defendants on  
23 trial here --

24 MR. DEVORKIN: No.

25 THE COURT: Then I am going to ask the jury to

1 mcjb 35

2 forget what I said on flight.

3 MR. DEVORKIN: Yes.

4 THE COURT: That is the end of that.

5 MR. DEVORKIN: Your Honor did at the time say  
6 that they should only hold that against somebody who did  
7 it.

8 THE COURT: I am going to tell them to disregard  
9 what I said on flight; that it is not applicable to what  
10 I said as to these three defendants.

11 MR. NADEN: I would appreciate that you say there  
12 is no evidence.

13 Your Honor charged the jury on the law of the  
14 conspiracy and told the jury, in substance, that persons  
15 in a conspiracy -- a conspiracy might end when association  
16 ends, which could end when there is police intervention,  
17 while a conspiracy might continue also and a person's  
18 association with that conspiracy might end -- my client  
19 is charged with an act committed during the month of March.

20 All the substantive acts took place, according  
21 to the evidence, in April and subsequent months. As to  
22 that time from the beginning of April on forward my client  
23 had no further association with the alleged conspiracy.  
24 He had no association, according to the evidence, with any  
25 of the individuals in the conspiracy, did not profit, and



1 mcjb 36

2 so forth.

3 Suffice to say, he never saw any of the witnesses.  
4 There is no evidence in the record that he had any further  
5 association with any individuals or with the fruits of this  
6 crime.

7 The argument can very well be made, sir, that my  
8 client's association, whether because of police intervention,  
9 because of the time, or because he didn't want to have any-  
10 thing to do with these people, ended at the end of March,  
11 in which case he would not be responsible, and your Honor's  
12 charge was under Pinkerton, under the subsequent acts com-  
13 mitted in April and at times following those substantive  
14 acts, being the actual production of counterfeit money and  
15 acquisition of materials with which to produce new nega-  
16 tives and counterfeit money, and in that light, taken at  
17 its best, the most he could have been charged with is some  
18 participation in the earlier aspect of the conspiracy.

19 Accordingly, your Honor, based on your charge I  
20 am concerned to move for a mistrial and a severance,—the  
21 reason being that the evidence is clear that my client had  
22 no further association with these people, no further asso-  
23 ciation with the actual production of any of the material  
24 introduced into evidence that was seized subsequent to the  
25 time the basement apartment was raided.

mcjb 37

Or I ask for a specific instruction, if your Honor chooses to deny that motion, that even if the jury determines that he was a member of that conspiracy and had joined up to the month of March, they could very well find that his association ended after the police came to the basement apartment.

THE COURT: What is the Government's answer to that?

MR. DEVORKIN: In the first instance, Count 2 says in or about April. That is why I raised this question about dates with your Honor, because the plates, the negatives that are fully covered by Count 2 were made in two locations. They were made in Mr. Araujo's building and they were made at Coster Avenue.

Mr. Araujo is responsible for both. He is responsible for the ones made in March, and why is he concerned about the date in the indictment which is in or about April if he is responsible under Count 2, irrespective of the withdrawal type theory?

The second argument is that there is no proof of withdrawal from the conspiracy and under the law he is responsible for the continuing actions of the conspiracy.

I would point out to your Honor that he didn't meet with other conspirators after the police, so-called



mcjb 38

police intervention.

Second of all, other members of the conspiracy, there was testimony, although they had no participation after the first basement money was laid aside for them, they may never have gotten it. They also are fully responsible for everything the conspiracy did that was foreseen when the member entered the conspiracy, and your Honor has stated the law clearly and accurately when he charged the jury the first time.

THE COURT: Counsel has made a point. He has presented it well and the answer is the Court denies the motion and the Court stands on the charge.

MR. NADEN: My final exception, your Honor, is that your Honor instructed the jury that they were not to be concerned about the sentencing of the people on trial and your Honor's instruction on that point was clear, except insofar as one important regard.

Your Honor told the jury that the reason why they were not to be concerned with sentencing was that they don't have all the information before them that would be necessary, and I suggest, first, that is the wrong standard. The standard is not whether they have all the information before them. The standard is they should not be concerned with sentence for other reasons and primarily, I suggest,

1 mcjb 39

2 because it might put them in the sway of sympathy toward  
3 one side or against the other and because generally it is  
4 not within the province of their knowledge or experience  
5 and they are not familiar with the standards.

6 That, I suggest, is the reason why a jury should  
7 not be concerned with sentencing.

8 Your Honor, however, made an unfortunate link-up  
9 of the proper aspect of that charge with the fact of a defen-  
10 dant's not taking the stand in his own defense and mentioned  
11 to the jury that because a defendant doesn't take the stand  
12 they don't know enough about him to make a determination as  
13 to what the sentence might be.

14 The Court did cure that glaring error by re-  
15 iterating the fact that no inference can be drawn from the  
16 fact of a defendant not taking the stand, but the link-up  
17 was made, you see, and I believe the jury can draw an  
18 inference that those defendants who did not take the stand,  
19 one of whom was my client, might very well have had something  
20 to hide.

21 THE COURT: We did protect to some extent and tried  
22 to lock the door after the cow escaped, something which  
23 could very well have galloped into the jury's mind, that  
24 the particular defendant did not take the stand because  
25 there was something that the jury might find out about him.



1 mcjb 40

2 MR. NADEN: I'm afraid, even though the Court tried  
3 to cure the error by implying in the charge that the reason  
4 a jury cannot consider sentence is because they don't know  
5 about a defendant who didn't take the stand, even though it  
6 is his right not to do so -- I don't see how it can be cured  
7 and I think reiterating those words cannot cure it.

8 I am going to move for a mistrial on the ground  
9 of that particular charge, even though the Court made as  
10 much effort as possible to limit the effect on the charge  
11 as to the defendant's failure to take the stand.

12 THE COURT: I got your point. It does you credit.  
13 It shows the care with which you watched everything, but  
14 you have placed upon it a significance that is unwarranted.

B24

15 I don't with trying to assign a reason why the  
16 jury should not undertake to have anything at all to do  
17 with sentencing and I gave them what you referred to by  
18 way of an illustration, and I can say I have used a good  
19 deal of what went into this charge today on prior occasions  
20 and what I did, as I always do, is fashion the charge to  
21 the particular case.

22 There has hardly been any portion that I have used  
23 that wasn't warranted by the facts disclosed and the very  
24 language dealing with punishment and sentencing I have used  
25 on other occasions, which has been scrutinized by the Court

1 mcjb 41

2 of Appeals on numerous occasions and all I'm trying to say  
3 is that that particular portion of the charge is word for  
4 word with what I have used on other occasions in other  
5 cases which have gone up to the Circuit Court for examina-  
6 tion and it has remained firm.

7 By no means did I create this particular charge  
8 de novo. I resorted to precedent, to taking portions that  
9 have al been approved in the past. It is my way of  
10 expressing myself, and so that plus many other portions  
11 of this charge have been used by me on prior occasions in  
12 other cases and they are of a general nature and they em-  
13 brace the facts in this case, so I have no alternative but  
14 to say that I deny any motion that you may have indicated  
15 you wish to place on the record because the Court did what  
16 you claim.

17 I do not think that that is a fair reading of what  
18 was actually said and I stand on the charge.

19 Is there anything else, Mr. Naden?

20 MR. NADEN: Just the fact that my client, to my  
21 understanding, has no prior criminal record. He is not in  
22 the country according to regulation, but I understand he  
23 has never been arrested for it.

24 I believe that that link-up is of a highly preju-  
25 dicial nature. I think if the Court merely instructed the



1 mcjb 42

2 jury that it is the Court's province, everybody would stand  
3 it very well.

4 THE COURT: Mr. Herwitz?

5 MR. HERWITZ: I have no specific objections to  
6 any specific part of your charge, but I would like to go  
7 on record, that is, I would like to preserve the record  
8 and make a point I made heretofore, I'm not sure whether  
9 on the record: That the conspiracy charge and proof here  
10 insofar as the defendant Hichez is concerned was so broad  
11 in relationship to his connection with it that he couldn't  
12 get that kind of a fair trial to which he was entitled,  
13 and I respectfully submit that because of that your Honor's  
14 charge, thorough, complete, extensive, also takes away from  
15 his ability to get his case and the facts in his case  
16 directly passed upon by the jury.

17 I know, your Honor, this is an objection of mine  
18 that you won't sustain, that you are going to overrule it,  
19 but I am making a record because I'm fully familiar -- I  
20 forget the name of the case -- where Justice Jackson criti-  
21 cized this whole theory of conspiracy indictments, and I  
22 don't want to be the lawyer who did not make the point.

23 MR. NADEN: I don't want to be the lawyer who  
24 fails to join in that objection to the Court's charge, and  
25 I wish the record would indicate that the defendant Araujo

1 mcjb 43

2 joins that motion.

3 MR. HERWITZ: I join all the motions that all of  
4 the other defendants' counsel made which relate to my client.

5 MR. CURLEY: So do I, your Honor.

6 THE COURT: The same ruling.

7 I will tell the jury what we said with respect to  
8 flight. I am very obliged to you for pointing that out.

9 (In open Court.)

10 THE COURT: Ladies and gentlemen of the jury, the  
11 charge is complete, but I ask you to remove from your minds  
12 what I had to say on flight. It was brief, but it doesn't  
13 relate to any one of these three defendants. The flight  
14 that I had reference to was the flight that was alleged  
15 with regard to the episode where they went around to the  
16 rear of the car to get what the agent, Agent Simon, said  
17 was where the money was and those who were there -- none  
18 of these three defendants were among them, so that is my  
19 error.

20 Throw it out of your minds. It has nothing at  
21 all to do with the charge. Consider it as though it had  
22 never been uttered by me.

23 So, disregard, in other words, what I told you  
24 as to the law as to flight.

25 Mr. Clerk, please proceed.



1 mcjb 44

2 (Marshals sworn.)

3 THE COURT: Mr. Foreman and ladies and gentlemen  
4 of the jury: I have said this to jurors in the past and  
5 I hope I'm spared to be able to say it many times hereafter,  
6 that is:

7 That in the last analysis when you cut it right  
8 down to earth and talk earthly justice, this case rides  
9 with you, the jury. What goes on in the jury room is your  
10 business. It is as sacred a room as mine. No one is  
11 allowed to go in there except when you send for them.  
12 Officials have no right in there. You are to talk to no  
13 one outside the jury room.

14 If you wish to send a note to me, Mr. Foreman,  
15 don't hesitate to do so. Write it out, put it in an en-  
16 velope, knock on the door and the Marshal will respond,  
17 so hand it to him, and that is it.

18 Mr. Finebaum and Mr. Resigno, the time has come  
19 when we have a jury of 12 ready to undertake their mission  
20 and there is no need to detain you any further. But I won't  
21 let you go without saying to you that I watched you through  
22 the corner of my judicial eye, and it is a pretty well  
23 trained eye after 36 years, and I noticed the earnestness  
24 and the sense of deep concern and the worryment that on  
25 occasion came across your countenances and I saw, as I did

1 mcjb 45

2 with all the others, that you wanted to do your full sworn  
3 duty.

4 I thank you not only for myself but for counsel  
5 and I want you to recognize that your standing by was a  
6 comfort to all of us and that you have accomplished your  
7 mission and undertaken your obligation with the highest  
8 type of dedication. Thank you very much.

9 Won't you please step down and take a place in  
10 the courtroom and await what the Clerk has to say to you.

11 Mr. Foreman, ladies and gentlemen of the jury,  
12 you may now at the hour of 3:40 undertake your delibera-  
13 tions.

14 (The jury left the courtroom.)

15 MR. DEVORKIN: Your Honor stated to the jury or  
16 to the Clerk that you wanted the exhibits taken to them.

17 THE COURT: Right. The exhibits have to be  
18 gathered right now, all the exhibits, and I want a record  
19 made of what it is you are sending in. That takes a little  
20 time. Please do it among yourselves. Don't ask me to  
21 assume that obligation. Say to me as quickly as possible,  
22 Judge, we are ready to send in the exhibits. Judge, we  
23 are ready to do that on the record.

24 MR. NADEN: It would be my preference, if it makes  
25 more sense, to wait until the jury calls for them.



mcjb 46

THE COURT: Sir, you heard what the Judge directed.  
I'm directing that the exhibits go in, and that is it.

MR. NADEN: Very well.

THE COURT: I want all the exhibits sent in.

(Recess.)

(In the robing room.)

THE COURT: After an off the record discussion,  
it was decided that we send into the jury a recapitulation  
of each of the counts against each defendant so that they  
will know from this what is the essence of each count against  
each defendant, and all counsel agree and I shall add to it  
"guilty or not guilty" and it will all be framed out and you  
gentlemen will get a copy of what will be sent into the jury  
room.

All right, you can add anything that you want and  
I'll take it.

(Recess.)

(The following Government Exhibits were sent to  
the jury: 1-13, 1-22, 26, 27, 28a, 28b, 29a, 29b, 32a, b,  
c, d, e, f, g, i, j, k, m, n, o, r, s, t(1), t(2), u, v, w,  
x, y, 33a, 33b, 33c, 34a, 34b, 35d, 40, 41, 42, 43, 45, 46,  
47, 48, 49, 50, 50a, 50b, 50c, 51, 52, 53, 54, 55, 56, 57,  
58, 59.)

THE COURT: Gentlemen, at 5:10, and it is now

1 mcjb 47

2 5:22, this note came from the jury to the Clerk who just  
3 handed it to me:

4 "Re charges 9 to 12. Does the defendant have to  
5 sell, exchange, transfer, receive and deliver false, forged  
6 and counterfeited obligations as stated in the charge or  
7 just one of the above?"

8 I'm quite sure that the answer is quick to all of  
9 us and that is any one. So I thought we would just write a  
10 note saying:

11 "In answer to your note, the answer is any one of  
12 the above," and I'll just quote their language.

13 Acceptable, Mr. Herwitz?

14 MR. HERWITZ: Yes.

15 THE COURT: Acceptable, Mr. Curley?

16 MR. CURLEY: Yes.

17 THE COURT: Acceptable, Mr. Naden?

18 MR. NADEN: Yes, sir.

19 THE COURT: Mr. Herwitz, would you please write  
20 as follows:

21 "In answering your note, and employing your lan-  
22 guage, just one of the above."

23 MR. HERWITZ: I have written it, your Honor, as  
24 follows:

25 "Answering your note, and employing your language:



1 mcjb 48

2 just one of the above."

3 THE COURT: There are three dots before "just."

4 MR. HERWITZ: Yes.

5 THE COURT: Thank you. Mr. Clerk, will you sign  
6 your name as Clerk and say for Judge Cooper.

7 Now, gentlemen, take a look at this outline which  
8 we discussed in the robing room and see if it is all right  
9 to go to the jury as you agreed to.

10 In the meantime, Marshal, would you please take  
11 this note into the jury, which has just been written by Mr.  
12 Herwitz and signed by the Clerk in my name.

13 MR. HERWITZ: The outline is satisfactory, your  
14 Honor.

15 MR. DEVORKIN: Satisfactory, your Honor..

16 MR. CURLEY: Satisfactory, your Honor.

17 MR. NADEN: Satisfactory, your Honor.

18 THE COURT: You may keep one copy for your files  
19 and I will hand one to all counsel and have one for myself.

20 Thank you, gentlemen, for your help.

21 On the record, please, and will the interpreters  
22 translate this to the defendants:

23 I have had occasion to comment on the quality of  
24 service rendered by your lawyers. I have no idea what the  
25 jury will decide and possibly this is the time rather than

1 mcjb 49

2 after the verdict to tell you that each of the attorneys  
3 representing each of you has shown an admirable professional  
4 interest and concern with your defense.

5 Defendants or lay people very seldom understand  
6 the many problems that come to the fore at a trial. May  
7 lay people think that what counts is when a lawyer shouts  
8 and screeches and that that kind of behavior indicates con-  
9 cern and remarkable fighting qualities.

10 Let me tell you that that kind of behavior is  
11 usually empty of merit and is not only detected instantly  
12 by the Judge, but by the jury. Every time your lawyers  
13 spoke they had something worthwhile to say. Otherwise  
14 they remained silent. They were not going to jeopardize  
15 your interests by saying something that was thoughtless,  
16 that had no meaning and wouldn't count in any respect what-  
17 ever.

18 When a lawyer as a member of my honored profession  
19 does his job and shows a devotion and gives of himself self-  
20 lessly, I am deeply appreciative and I think we should  
21 pause long enough to have you know the Judge's high regard  
22 for your counsel and for their help to the Court.

23 You are fortunate indeed that our law enables you  
24 to have them at your side.

25 MR. HERWITZ: May I express, as the senior member



mcjb 50

of the defense counsel, naturally, our appreciation for your Honor's comments, but also say that we have also been beneficiaries of your wise counsel in this case.

We have learned, and I will say on behalf of my young adversary, while I have made my points, we have all made our points about the technical fairness or unfairness of the trial, the Government's attorney, in line with the usual standards of this attorney's office, has always given us what we are entitled to and more and we appreciate that.

THE COURT: That is particularly worth emphasizing and I agree with you. Thank you for placing it on the record.

(Recess.)

(Discussion off the record in the robing room.)

(In open Court with the jury present at 5:40 p.m.)

THE COURT: Ladies and gentlemen of the jury, we have your note reading:

"We would like to hear the testimony of all witnesses relating to defendant Araujo."

We will dig that out for you. It takes time to locate what each witness had to say with regard to him. We are going right after it, the attorneys and the official Court Reporter. You've got to bear with us and as soon as

mcjb 51

it is assembled, you will be called into the courtroom and it will be read to you.

In the meantime, Marshal, please make arrangements that these ladies and gentlemen of the jury are to go to dinner and in your custody, and I know that you will make it at a good place and that they will have enjoyable food.

The Court gives permission, as the law commands, that they can have no more than one drink with alcohol in it. After they have supped you will bring them back into the jury room and they will continue with their deliberations.

If this material with regard to Araujo can be gathered before you go to dinner, we will call you in, and if it can't be gathered by that time it will be read to you after you return.

Tonight you will be deliberating, continuing your deliberations, and you will be taken home, as I promised you, by limousine, each one to your homes. Don't be worried about that. I don't want any concern about anything except your duty to this case. Don't worry about how you are getting home. You will be taken home under the Marshals' direction.

We have the greatest faith in our United States Marshals. They have done this many times pursuant to my

-B26



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

mcjb 52

direction. They will carry it out. So you go on deliberating.

Do you think you can fix the time for dinner at 6:30, Marshal?

DEPUTY MARSHAL: I think so. That hour will be all right.

THE FOREMAN: Some of the jurors have requested calls to their homes.

THE COURT: The Marshal will take care of all that. Tell the Marshal who you want to call or where you want to call and he will take care of that.

(The jury left the courtroom, was taken to dinner, and returned to the courtroom at 8:25 p.m.)

THE COURT: Answering the jury's note, which has been marked Court's Exhibit 2, it now being 8:25, the jury having returned from dinner, the Court Reporter, with the thanks of the Court and all of us, along with counsel, is now ready to read the testimony requested.

(Record read.)

THE COURT: Mr. Court Reporter, and gentlemen, counsel, you have done a remarkably splendid piece of work picking this out and the jury has had a right to ask for it, but it is certainly not the usual easily done request.

You had to pick and choose, and we are indebted to

1 mcjb 53

2 you. Mr. Conen, your reading of it was excellent.

3 Very well, please continue with your deliberations.

4 (The jury left the courtroom.)

5 (Recess.)

6 (In the robing room.)

7 THE COURT: Will you have the record reflect that  
8 the reading took an hour and 20 minutes and that the jury  
9 just left to go on with its deliberations, and by that I  
10 mean at 9:40. Thank you.

11 (Recess.)

ROBERT B. FISKE



ROBERT B. FISKE